

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2008 Legislative Session

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

<i>24.05.01 - Rules of the Board of Drinking Water and Wastewater Professionals</i>	
Docket No. <i>24-0501-0701</i>	2

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

<i>58.01.01 - Rules for the Control of Air Pollution in Idaho</i>	
Docket No. <i>58-0101-0701</i>	12
<i>58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants</i>	
Docket No. <i>58-0104-0701</i>	24
<i>58.01.05 - Rules and Standards for Hazardous Waste</i>	
Docket No. <i>58-0105-0701</i>	48
<i>58.01.07 - Rules Regulating Underground Storage Tank Systems</i>	
Docket No. <i>58-0107-0701</i>	58
<i>58.01.08 - Idaho Rules for Public Drinking Water Systems</i>	
Docket No. <i>58-0108-0701</i>	74
<i>58.01.10 - Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended</i>	
Docket No. <i>58-0110-0701</i>	102
<i>58.01.20 - Rules for Administration of Drinking Water Loan Program</i>	
Docket No. <i>58-0120-0701</i>	108
<i>58.01.22 - Rules for Administration of Planning Grants for Public Drinking Water Facilities</i>	
Docket No. <i>58-0122-0701</i>	131

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2406, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 119 through 125.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 26th day of October, 2007.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste 220
Boise, ID 83709
(208) 334-3233
(208) 334-3945 fax

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-2406, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To define direct supervision and experience, allow consideration of a backflow examination, clarify education and experience requirements to standardize the process, add provision for continuing education courses approved by specific states, clarify reinstatement of license, and change operator-in-training from permit to license.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are to clarify processes and to benefit licensees.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 15th day of August, 2007.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS (RULE 10).

- 01. Board.** The Idaho Board of Drinking Water and Wastewater Professionals. (3-24-05)
- 02. Bureau.** The Idaho Bureau of Occupational Licenses. (3-24-05)
- 03. DEQ.** The Idaho Department of Environmental Quality. (3-24-05)
- 04. Direct Supervision.** Supervision in a way that will ensure the proper operation and maintenance of the public drinking water or public wastewater system. Supervision shall include, but not be limited to, providing written, hands-on, or oral instruction as well as verification that the instructions are being completed. The supervisor has an active on-site and on-call presence at the specific facility. ()
- 045. Endorsement.** Endorsement (often referred to as “reciprocity”) is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. (3-24-05)
- 056. EPA.** The United States Environmental Protection Agency. (3-24-05)
- 07. Experience.** One (1) year of experience is equivalent to one thousand six hundred hours (1,600) worked. ()
- 068. Operating Personnel.** Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (3-24-05)
- 079. Person.** A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (3-24-05)
- 0810. Public Drinking Water System or Public Water System.** Public drinking water system or public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Every community and

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

nontransient noncommunity water system, and each transient water system using a surface water source or ground water source directly influenced by surface water, shall be operated by a certified drinking water operator. (3-24-05)

~~0911~~. Public Wastewater System or Wastewater System. Public wastewater system or wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a nonprofit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, nonmechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership. (3-24-05)

~~102~~. State. The state of Idaho. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

300. REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required. (3-24-05)

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%). For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or wastewater laboratory analyst or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education and experience. (3-30-06)

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of licensure shall be validated and provided by the Association of Boards of Certification (ABC). The American Backflow Prevention Association (ABPA) backflow assembly tester licensure is also approved. ~~(3-30-06)~~(____)

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

d. Applicants must take and pass the examination within one (1) year of application

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

approval. After one (1) year a new application and applicable fees must be submitted. (3-30-07)

02. Education and Experience Requirements. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable. An applicant may not use the same experience for more than one (1) license. ~~(3-24-05)~~()

a. Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass a Class I exam. (3-30-06)

b. To qualify for a Very Small Water System license an operator must have a high school diploma or GED and six (6) months of acceptable operator-in-training experience at a water distribution system. (3-24-05)

c. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. To upgrade an OIT license to a Class I the applicant must provide documented proof to the Board of having completed one (1) year of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the required fees. ~~(3-24-05)~~()

d. To qualify for a Class II treatment or lab analyst license II an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. ~~(3-24-05)~~()

e. To qualify for a Class III treatment or lab analyst III license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. ~~(3-24-05)~~()

f. To qualify for a Class IV treatment or lab analyst IV license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. ~~(3-24-05)~~()

g. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (3-24-05)

h. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

i. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

j. To qualify for a lagoon license, an operator must have a high school diploma or GED and twelve (12) months of acceptable supervised operating experience at a Lagoon system. (3-24-05)

k. To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license and minimum six (6) months of hands-on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (3-24-05)

l. To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures. (3-30-06)

m. To qualify for an original wastewater laboratory analyst license, an applicant must hold a current water treatment, wastewater treatment or lagoon license. (3-24-05)

03. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-24-05)

a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-24-05)

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (3-24-05)

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-24-05)

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (3-24-05)

e. Education substituted for operating experience may not be also credited toward the education requirement. (3-24-05)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

04. Substituting Experience for Education. Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (3-24-05)

a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-24-05)

b. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = one (1) year post high school education. (3-24-05)

05. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half ($\frac{1}{2}$) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (3-24-05)

a. Experience as an environmental or operations consultant; (3-24-05)

b. Experience in an environmental or engineering branch of federal, state, county, or local government; (3-24-05)

c. Experience as a wastewater collection system operator; (3-24-05)

d. Experience as a wastewater treatment plant operator; (3-24-05)

e. Experience as a water distribution system operator and/or manager; (3-24-05)

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

g. Experience in waste treatment operation and maintenance. (3-24-05)

06. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-24-05)

a. High School - High School diploma = GED or equivalent as approved by the Board = four (4) years. (3-24-05)

b. College - Thirty-five (35) credits = one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). (3-24-05)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours = one (1) CEU; forty-five (45) CEUs = one (1) year of college. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

500. CONTINUING EDUCATION (RULE 500).

In order to further protect the health, safety and welfare of Idaho's public, and to facilitate the continued competence of persons licensed under the drinking water and wastewater professionals licensing act, the Board has adopted the following rules for continuing education. (3-24-05)

01. Continuing Education Requirement. Each licensee must successfully complete a minimum of six (6) hours (0.6 CEUs) of approved continuing education annually for license renewal, except that backflow assembly testers shall complete an eight (8) hour refresher course every two (2) years for license renewal. Continuing education must be earned in a subject matter relevant to the field in which the license is issued. A licensee holding one (1) or more drinking water license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding one (1) or more wastewater license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding both drinking water and wastewater class licenses must complete a minimum of six (6) hours annually for the drinking water license plus six (6) hours annually for the wastewater license. (3-30-06)

a. Each licensee shall submit to the Board an annual license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the CE requirements have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (3-24-05)

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their license. (3-24-05)

c. A water or wastewater licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. The same hours may not be carried forward more than one (1) renewal cycle. (3-24-05)

d. Continuing Education hours for approved operator training courses, seminars, related college courses, and other training activities may be converted to Continuing Education Units (CEU) as follows: Six (6) classroom hours = point six (0.6) CEU. (3-24-05)

02. Subject Material. The subject material of the continuing education requirement shall be relevant to the license for which the continued education is required. "Relevant" shall be limited to material germane to the operation, maintenance and administration of drinking water and wastewater systems as referenced in Chapter 24, Title 54, Idaho Code, and includes those subjects identified in the "need to know" criteria published by the Associations of Boards of Certification. (3-30-06)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES
Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

03. Course Approval. All course providers must submit requests for approval of continuing education courses to the Board in writing no less than thirty (30) days prior to the course being offered, on a form approved by the Board that includes: (3-30-06)

- a. The name and qualifications of the instructor or instructors; (3-24-05)
- b. The date, time and location of the course; (3-24-05)
- c. The specific agenda for the course; (3-24-05)
- d. The type and number of continuing education credit hours requested; (3-24-05)
- e. A statement of how the course is believed to be relevant as defined; (3-24-05)
- f. Any certificate of approval from a governmental agency if the course has been previously approved for continuing education; (3-30-06)
- g. The training materials; (3-24-05)
- h. Other information as may be requested by the Board. (3-24-05)
- i. Upon review of all information requested, the Board may either approve or deny any request for a course. Board approval of a course shall be granted for a period not to exceed two (2) years or until the course materials or instructors are changed. (3-30-06)

04. Approved Courses. Those continuing education courses which are relevant and approved by the states of Nevada, Oregon, Montana, Utah, Wyoming, and Washington are deemed approved by the Board. ()

045. Verification of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee and provided upon request of the Board or its agent. (3-24-05)

056. Distance Learning and Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensee in a face-to-face setting with the course instructor. The licensee shall maintain documentation of the nature and details of the course and evidence that the licensee successfully completed the course, which shall be made available to the Board upon request. (3-30-06)

067. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (3-24-05)

078. Exemptions. The Board may waive the continuing education requirement or

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAHO BUREAU OF OCCUPATIONAL LICENSES Board of Drinking Water and Wastewater Professionals

Docket No. 24-0501-0701
PENDING RULE

extend the deadline up to ninety (90) days for any one or more of the following circumstances. The licensee must request the exemption and provide any information requested to assist the Board in making a determination. An exemption may be granted at the sole discretion of the Board. (3-30-06)

a. The licensee is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for licensure renewal and has complied with the requirements of that state or district. (3-24-05)

b. The licensee is a government employee working outside the continental United States. (3-24-05)

c. The licensee documents individual hardship, including health (certified by a medical doctor) or other good cause. (3-24-05)

501. -- 599. (RESERVED).

600. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 600).

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-24-05)

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant shall submit proof of having ~~met the~~ completed the total number of required continuing education for each year the license or certificate was cancelled. (3-24-05)(____)

03. Operator-in-Training ~~Permit~~ License. Applicants for the operator-in-training ~~permit~~ license shall, upon compliance with the requirements of Subsections 300.01 and 300.02, be issued a "one-time" non-renewable ~~permit~~ license for the purpose of gaining supervised experience as an operator-in-training (OIT). This ~~permit~~ license will be valid for three (3) years from the date of issue. ~~Upon making application and providing~~ To upgrade an OIT license to a Class I the applicant must provide documented proof to the Board of having completed ~~twelve (12) months~~ one (1) year of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the required fees, ~~the permittee will be issued a Class I License.~~ (3-30-06)(____)

04. Backflow Assembly Testers. Backflow assembly testers shall complete a Board-approved eight (8) hour refresher course every two (2) years for license renewal. (3-30-06)

05. Wastewater Land Application License. Wastewater land application licenses shall not be renewed unless the licensee also maintains a current wastewater treatment license. (3-30-06)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 128 through 135. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/air/58_0101_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

Dated this 11th day of October, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
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ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

September 6, 2007 -- 4:00 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2007. Sections 200, 204, and 205 also include citations to federal regulations incorporated by reference in the state rules. DEQ proposes to revise Sections 200, 204, and 205 to eliminate the need to annually revise the effective date of the Code of Federal Regulations in those sections.

This rulemaking also deletes references to the clean unit and pollution control project provisions, which are expressly excluded from incorporation by reference into the state rules. These references, which are found at Subsections 107.03.a.i., 107.03.d., 204.01., and 205.01, are no longer necessary because EPA recently adopted a final rule eliminating the pollution control project and clean unit provisions from the federal regulations.

Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulations of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 6, 2007.

DATED this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

b. Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)

c. Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)

d. Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)

e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)

f. Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

**Docket No. 58-0101-0701
PENDING RULE**

- 07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)
- 08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)
- 09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)
- 10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)
- a.** For hazardous air pollutants: (3-23-98)
 - i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)
 - ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)
 - b.** For non-attainment areas: (3-23-98)
 - i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)
 - ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)
 - iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)
 - iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories:

(4-11-06)

i. Designated facilities.

(3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act.

(4-5-00)

11. **Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2006~~7~~, are hereby incorporated by reference.

(~~3-30-07~~)()

12. **Permit Revision.** Any permit modification, administrative amendment or reopening.

(3-19-99)

13. **Phase II Source.** A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections.

(5-1-94)

14. **Phase II Unit.** A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections.

(5-1-94)

15. **Proposed Permit.** The version of a permit that the Department proposes to issue and forwards to the EPA for review.

(5-1-94)

16. **Section 502(b)(10) Changes.** Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(3-19-99)

17. **Tier I Operating Permit.** Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386.

(3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. **General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association.

(5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

a. All federal publications: U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans and Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Part 51 revised as of July 1, 2006~~7~~. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (~~3-30-07~~)()

~~i. The clean unit and pollution control project provisions in 40 CFR 51.165;~~ (~~3-30-07~~)

~~ii.~~ All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

~~iii.~~ Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2006~~7~~. (~~3-30-07~~)()

c. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, 40 CFR 51.301, 51.304(a), 51.307, and 51.308, revised as of July 1, 2006~~7~~. (~~3-30-07~~)()

d. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, ~~excluding the clean unit and pollution control project provisions in 40 CFR 52.21~~, revised as of July 1, 2006~~7~~. (~~3-30-07~~)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

- e. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- f. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- g. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- h. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- j. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- k. Permits, 40 CFR Part 72, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- l. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- m. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~()
- n. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- o. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2006~~7~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. ~~(3-30-07)~~()
- p. The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.

The purposes of Sections 200 through 228 is to establish uniform procedures and requirements for the issuance of "Permits to Construct." As used throughout Sections 200 through 228 and 578 through 581, major facility shall be defined as major stationary source in 40 CFR 52.21(b), ~~revised as of July 1, 2005~~ incorporated by reference into these rules at Section 107, and major modification shall be defined as in 40 CFR 52.21(b), ~~revised as of July 1, 2006~~ incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.gpoaccess.gov/ecfr. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.

New major facilities or major modifications proposed for location in a nonattainment area and which would be major for the nonattainment regulated air pollutant are considered nonattainment new source review (NSR) actions and are subject to the requirements in Section 204. Section 202 contains application requirements and Section 209 contains processing requirements for nonattainment NSR permitting actions. The intent of Section 204 is to incorporate the federal nonattainment NSR rule requirements. (4-6-05)

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 51.165, ~~excluding the clean unit and pollution control project provisions, revised as of July 1, 2005,~~ are ~~hereby~~ incorporated by reference into these rules at Section 107. Requirements contained in the following subparts of 40 CFR 52.21, ~~revised as of July 1, 2006,~~ are ~~hereby~~ incorporated by reference at Section 107 of these rules. These CFR sections have been codified in the electronic CFR which is available at www.gpoaccess.gov/ecfr

40 CFR Reference	40 CFR Reference Title
40 CFR 51.165(a)(1)	Definitions
40 CFR 51.165(a)(2)(ii)(A) - (J)	Applicability Provisions
40 CFR 51.165(a)(6)(i) - (v)	Applicability Provisions
40 CFR 52.21(aa)	Actual PALs

(3-30-07)()

02. Additional Requirements. The applicant must demonstrate to the satisfaction of the Department the following: (4-6-05)

- a. LAER. Except as otherwise provided in Section 204, the new major facility or

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: (4-6-05)

i. A new major facility would meet the lowest achievable emission rate at each new emissions unit which emits the nonattainment regulated air pollutant; and (4-5-00)

ii. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit which has a net emissions increase of the nonattainment regulated air pollutant. (4-5-00)

b. Required offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, facilities, and/or mobile sources in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the requirements for emission reduction credits (Section 460) and provide for a net air quality benefit which satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct shall not be issued for the new major facility or major modification until the offsetting reductions are made enforceable through the issuance of operating permits. The new major facility or major modification may not commence operation, and an operating permit for the new major facility or major modification shall not be effective before the date the offsetting reductions are achieved. (4-5-00)

c. Compliance status. All other sources in the State owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such person, are in compliance with all applicable emission limitations and standards or subject to an enforceable compliance schedule. (5-1-94)

d. Effect on visibility. The effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from Section 204 by the Department. (3-30-07)

03. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 51.165 or 40 CFR 52.21 incorporated in Section 204, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.

The prevention of significant deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. Section 202 contains

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

application requirements and Section 209 contains processing requirements for PSD permit actions. The intent of Section 205 is to incorporate the federal PSD rule requirements. (4-6-05)

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 52.21, ~~excluding the clean unit and pollution control project provisions, revised as of July 1, 2006,~~ are hereby incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.gpoaccess.gov/ecfr.

40 CFR Reference	40 CFR Reference Title
40 CFR 52.21(a)(2)	Applicability Procedures
40 CFR 52.21(b)	Definitions
40 CFR 52.21(i)	Review of Major Stationary Sources and Major Modifications - Source Applicability and Exempting
40 CFR 52.21(j)	Control Technology Review
40 CFR 52.21(k)	Source Impact Analysis
40 CFR 52.21(r)	Source Obligation
40 CFR 52.21(v)	Innovative Control Technology
40 CFR 52.21(w)	Permit Rescission
40 CFR 52.21(aa)	Actual PALS

(3-30-07)()

02. Effect on Visibility. The applicant must demonstrate that the effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from this requirement by the Department. (3-30-07)

03. Exception to Incorporation by Reference of 40 CFR 52.21. Every use of the word Administrator in 40 CFR 52.21 means the Department except for the following: (4-6-05)

a. In 40 CFR 52.21(b)(17), the definition of federally enforceable, Administrator means the EPA Administrator. (4-6-05)

b. In 40 CFR 52.21(l)(2), air quality models, Administrator means the EPA Administrator. (4-6-05)

c. In 40 CFR 52.21(b)(43), permit program approved by the Administrator,

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0701
PENDING RULE

Administrator means the EPA Administrator. (4-6-05)

d. In 40 CFR 52.21(b)(48)(ii)(c), MACT standard that is proposed or promulgated by the Administrator, Administrator means the EPA Administrator. (4-6-05)

e. In 40 CFR 52.21(b)(50)(i), regulated NSR pollutant as defined by Administrator, Administrator means the EPA Administrator. (4-6-05)

04. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 52.21 incorporated in Section 205, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 136 through 153.

The proposed rule has been revised at Sections 000, 001, 004, 006, 007, 020, 030, 040, 041, 042, and 050 in response to public comment and for consistency and clarification. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/wastewater_grants/58_0104_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, this rule does regulate an activity not regulated by the federal government.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

Dated this 11th day of October, 2007.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants**

**Docket No. 58-0104-0701
PENDING RULE**

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants" (Grant Rules), for consistency with the environmental review of IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans," (Loan Rules), Section 042. The two sets of rules have different requirements for environmental information document preparation and there is no need for the difference. The current structure of the Grant Rules requires that the grant applicant prepare an environmental information document of a uniform scope, regardless of the need for mitigation. Compliance with the Grant Rules adds a burden to both the applicant and DEQ when a project qualifies for a categorical exclusion. An efficiency would be achieved by adopting the process used for wastewater facility loans, in which categorical exclusions are specifically allowed with a lower level of effort. Section 042 of the Loan Rules will be used as a model for the environmental review process for grants.

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of references to construction and other obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Cities, counties, districts and associations that own and operate wastewater treatment facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 61, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

The Idaho ~~State~~ Board of Environmental Quality, pursuant to authority granted in Chapters 1 and Chapter 36, Title 39, Idaho Code, ~~did~~ adopted the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho. (5-3-03)(____)

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." (5-3-03)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program for providing financial assistance to qualifying entities ~~for the construction of wastewater treatment facilities~~ to prepare an engineering report or facility plan. (3-15-85)(____)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (5-3-03)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

0034. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (5-3-03)()

02. Availability of Referenced Material. The "Wastewater Facilities Loan Handbook of Procedures" (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

005. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

0046. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Department of Environmental Quality to administer the Wastewater Treatment Facility Grant Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (5-3-03)

0057. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. Any qualifying entity making application for wastewater treatment facility grant funds. (5-3-03)

02. Board. The Idaho ~~State~~ Board of Environmental Quality. (12-31-91)()

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. (5-3-03)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (3-15-85)

~~**05. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of wastewater treatment facilities, the inspection and supervision of the construction, and start-up of the associated facilities.~~ (5-3-03)

065. Department. The Idaho Department of Environmental Quality. (1-3-78)

076. Director. The Director of the Idaho Department of Environmental Quality or ~~his/~~ her the Director's designee. (5-3-03)()

087. Domestic Wastewater. Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. (3-15-85)

098. Eligible Costs. Costs which are necessary for planning, and/or designing ~~and/or constructing~~ wastewater treatment facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)()

~~**2509. Preliminary Engineering Report.** An engineering report which compares that addresses specific portions of the system(s) as they are being contemplated for design. These reports address specific purpose and scope, design requirements, a comparison of wastewater treatment facility alternatives solutions and identifies the most cost effective, and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook.~~ (10-6-88)()

~~**140. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook applicant when the Department determines that the proposed drinking wastewater construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS.~~ (5-3-03)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~101.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater ~~construction~~ project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)()

12. Facility Plan. A plan that describes the overall system, including the collection system, the treatment system, and the disposal system. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. The plan also includes a ~~systematic evaluation by a professional engineer~~ of feasible ~~treatment~~ alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. (5-3-03)()

13. Finding of No Significant Impact (FONSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental ~~assessment information document~~ or a summary of it and shall note any other environmental documents related to it. (5-3-03)()

14. Handbook. "Wastewater Facilities Loan Handbook of Procedures." (5-3-03)

15. Ineligible Costs. Costs which are described in Subsection 041.065. (5-3-03)()

16. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (3-15-85)

~~**17. Municipality.** Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.~~ (5-3-03)

187. National Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (5-3-03)

198. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)

~~**2019. O & M Manual.**~~ A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. (10-6-88)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~21. **Phasing.** One (1) portion of a design or construction project needed to complete the total eligible project. Each phase may be made up of several engineering or construction contracts.~~ (1-1-82)

~~22. **Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up, operator training and operation of the wastewater treatment facility.~~ (10-6-88)

20. **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). ()

~~231. **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.~~ (5-3-03)

~~242. **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses.~~ (3-15-85)

~~263. **Priority List.** A list of proposed projects rated by severity as described in Section 020.~~ (5-3-03)

~~274. **Qualifying Entity.** Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater; ~~municipality.~~~~ (1-1-87)()

~~285. **Rehabilitation.** The repair or replacement of limited segments of interceptor or collector sewers.~~ (1-3-78)

~~296. **Reserve Capacity.** That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings.~~ (1-1-82)

~~3027. **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance ~~adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law~~ or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility.~~ (10-6-88)()

~~3128. **State.** The state of Idaho.~~ (3-15-85)

~~32. **Supplemental Grant.** A grant awarded to a municipality in conjunction with a loan from the wastewater facility loan program.~~ (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

3329. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (10-6-88)

340. Termination. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (10-6-88)

351. Treatment Plant. That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)

362. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, ~~and~~ operation, and maintenance, and replacement of the wastewater treatment facility. (~~10-6-88~~)()

373. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (3-15-85)

384. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. (10-6-88)

~~006.—009. (RESERVED).~~

~~010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.~~

~~No grants shall be awarded for the design and construction phases of projects unless the applicant has demonstrated that it has the legal, institutional, managerial, and financial capability to insure construction, operation and maintenance, including equipment replacement, of the proposed wastewater treatment facility, and including the qualifying entity's share of the cost of the project.~~ (~~5-3-03~~)

~~**01. Information Needed.** The applicant must submit legal, institutional, managerial and financial information on a form prescribed by the Department.~~ (~~5-3-03~~)

~~**02. Incorporated Nonprofit Applicants.** To fully meet the requirements of Subsection 010.01, incorporated nonprofit applicants must demonstrate that all of the following items are included in its Articles of Incorporation and/or Bylaws:~~ (~~5-3-03~~)

~~**a.** The corporation is nonprofit and incorporated according to Title 30, Chapter 3, Idaho Code.~~ (~~5-3-03~~)

~~**b.** Membership in the corporation is limited to property owners only, with one (1)~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~vote per lot or parcel.~~ (5-3-03)

~~e. Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining.~~ (5-3-03)

~~d. Corporation membership is not eliminated by cancellation of voting rights.~~ (5-3-03)

~~e. The purpose of the corporation is clearly defined.~~ (5-3-03)

~~f. Funds generated to operate one (1) function of a multipurpose corporation, i.e., one (1) providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function.~~ (5-3-03)

~~g. The corporation owns the system it intends to maintain.~~ (5-3-03)

~~h. Mutually agreeable access to a system owned by the corporation is provided by the property owners.~~ (5-3-03)

~~i. Membership and share, if any, in the corporation is tied to land ownership such that successive owners must acquire the preceding owner's membership, or voting shares, if any.~~ (5-3-03)

~~j. New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation.~~ (5-3-03)

~~k. No provision(s) restricts ownership of improved property.~~ (5-3-03)

~~l. The corporation is capable of raising revenue by fixing and collecting user charges.~~ (5-3-03)

~~m. The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership.~~ (5-3-03)

~~n. The corporation is capable of suing and of being sued, and will maintain the capability to impose liens on the real property of those members (shareholders) who become delinquent in user charges and further has the capability to suspend services, providing such suspension will not jeopardize use by other members.~~ (5-3-03)

~~o. Operation and maintenance functions of the corporation are identified in a manual for that purpose that is or will be approved by the Department. No changes can be made to the manual without consent by the Department.~~ (5-3-03)

~~p. The conditions for dissolution of the corporation are specified in the Declaration of Covenants. Dissolution is limited to connection to municipal facilities or merger with another approved nonprofit entity having financial and management capability for the merged system.~~ (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~q.~~ Except as provided in Subsection 010.02.p., the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval. (5-3-03)

~~r.~~ A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance. (5-3-03)

~~s.~~ The corporation is able to plan and control how and at what time additional service functions will be extended or added. (5-3-03)

~~t.~~ If the Articles of Incorporation and/or Bylaws provide for proxy voting, such proxies will not be binding on a new purchaser of the property. (5-3-03)

~~u.~~ Developers will contribute to the operation and maintenance functions until such time as the nonprofit corporation is self-sustaining. Consider either a specified period or when a specified number of lots or parcels have been sold. (5-3-03)

~~v.~~ The corporation has defined service area boundaries. (5-3-03)

~~03. Cost Allocation.~~ An applicant proposing to construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (5-3-03)

~~a.~~ The basis upon which the costs are allocated; and (3-15-85)

~~b.~~ The formula by which the costs are allocated; and (3-15-85)

~~c.~~ The manner in which the cost allocation system will be administered. (3-15-85)

~~04. Waiver.~~ The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)

~~a.~~ Such an agreement is already in place; or (3-15-85)

~~b.~~ There is documentation of a service relationship in the absence of a formal agreement; or (3-15-85)

~~c.~~ The entity providing wastewater treatment exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying wastewater fails to participate. (3-15-85)

~~0408.~~ -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ gGrant funds are awarded to projects based on priority ratings. Projects are rated by the

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

Department on a standard priority rating form using public health and water quality criteria.

(~~5-3-03~~)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system wherein each succeeding prevention, control or abatement need is weighted less heavily than the preceding need. Priority criteria, listed herein in descending numerical weight, shall contain the following points: (3-15-85)

a. Public health emergency certified by the ~~Department~~ Idaho Board of Environmental Quality or by a District Board of Health - fifty (50) points. (~~10-6-88~~)()

b. Documented public health hazard identified by a District ~~Boards of Health~~ Department or the Department - fifteen (15) points. (~~3-15-85~~)()

c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, ~~Section 102,~~ "Water Quality Standards" - fifteen (15) points. (~~12-31-91~~)()

d. Potential public health hazard and/or water quality impact: (1-1-87)

i. Potential public health hazard which is suspected but may not be documented by District Boards of Health or the Department three (3) or five (5) or seven (7) points. (3-15-85)

ii. Potential water quality impacts other than public health which may affect the intended use of surface or groundwaters as identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards" - three (3) or five (5) or seven (7) points. (3-15-85)

e. The points in Subsections 020.02.d.i. and 020.02.d.ii. shall be selected based on the proportion of the population in contact with the pollutant, or the quantity of wastewater discharged in relation to the volume of the receiving water, or the relation of the pollutant quantity to other pollutant sources. (12-31-91)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-15-85)

05. Priority Target Date. A qualifying entity whose project is on the approved list will be contacted by the Department and a target date for submission of a completed grant

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

application will be established.

(5-3-03)

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project(s) that are ready to proceed. A municipality qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (3-15-85)()

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare an engineering report or facility plan which identifies the cost effective and environmentally sound wastewater system alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1251 et seq., and which is approvable by the Department. ()

01. ~~Project Step Funding.~~ Projects may be funded in four (4) steps: Engineering Report or Facility Plan. (5-3-03)()

a. ~~Step 1. Facilities planning, which will include:~~ The engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The engineering report or facility plan shall include, as a minimum, the following: (3-15-85)()

i. ~~Preliminary engineering report prepared by an engineer licensed in the state of Idaho and on a form prescribed by the Department; or~~ Description of existing conditions for the proposed project area; (3-15-85)()

ii. ~~Facility plan prepared in accordance with the Handbook.~~ Description of future conditions for the proposed project area; (5-3-03)()

iii. Development and initial screening of alternatives; ()

iv. Final screening of principal alternatives and plan adoption; ()

v. Selected plan description and implementation arrangements; ()

vi. Relevant engineering data supporting the final alternative; and ()

vii. Level of environmental review specified by the Department as described in Section 042. ()

b. ~~Step 2. Design and specifications, which includes the preparation of the detailed plans and specifications necessary for the bidding and construction of the project.~~ The engineering report or facility plan must be reviewed and approved by the Department. (1-3-78)()

c. ~~Step 3. Construction, which includes bidding and actual construction of the~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~project.~~ The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (1-3-78)()

d. ~~Step 4. A combination of Step 2 and Step 3.~~ At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project. (3-15-85)()

02. ~~Combination Step Funding.~~ ~~Projects may be funded in any combination of the steps in Subsection 030.01 with the approval of the Department.~~ **Limitation on Funding Assistance.** The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (12-31-91)()

03. ~~Cost Effective Requirement.~~ ~~Step 2, Step 3 or Step 4 grants will not be awarded until a final cost effective environmentally sound alternative has been selected by the Step 1 facility plan or preliminary engineering report as approved by the Department. The most cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by intended users within the jurisdiction of the qualifying agency and conducted in accordance with state law.~~ (5-3-03)

04. ~~Supplemental Grants.~~ ~~In conjunction with loans provided to municipalities from the wastewater facility loan program, the Department may award supplemental grants in the following manners:~~ (5-3-03)

a. ~~Planning and design projects may receive up to ninety percent (90%) funding of eligible costs; and~~ (10-6-88)

b. ~~Construction projects may receive up to ninety percent (90%) funding of eligible costs that exceed the amount a loan recipient is able to pay as determined by the Department's published guidelines.~~ (10-6-88)

05. ~~Funding for Reserve Capacity.~~ ~~Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department.~~ (3-15-85)

06. ~~Nondomestic Capacity Limitation.~~ ~~Grant funds, including supplemental grant funds, shall not be awarded for construction of treatment capacity for any single nondomestic source which is determined to be:~~ (10-6-88)

a. ~~Contributing ten percent (10%) or more of the organic or hydraulic loading of the sewage treatment works; or~~ (1-1-82)

b. ~~If the source requires installation of special treatment processes that add an increment of ten percent (10%) or more to the capital costs of the sewage treatment works; and~~ (1-1-82)

c. ~~Any nondomestic source discharge exceeding the provisions in Subsections~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~030.06.a. and 030.06.b. shall be required to purchase the entire portion of their needed treatment capacity.~~ (5-3-03)

~~08. Eligible and Ineligible Project Costs for Supplemental Grants. Eligible and ineligible costs for supplemental grants are delineated in Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Wastewater Treatment Facility Loans."~~ (10-6-88)

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)

032. -- 039. (RESERVED).

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form as prescribed by the Department. (5-3-03)

02. Application Requirements. Applications shall contain the following documentation as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services, and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041. (5-3-03)

c. ~~Step 1 Facility Planning~~ Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the ~~Preliminary e~~Engineering report or facility plan, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks. (10-6-88)(____)

d. ~~Step 2 Design or Step 4 Design and Construction:~~ (3-15-85)(____)

i. ~~Preliminary e~~Engineering report or facility plan; and (3-15-85)(____)

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and (3-15-85)

e. ~~Step 3 Construction:~~ (3-15-85)

i. ~~Documented evidence of all needed easements and land acquisition; and~~ (5-3-03)

ii. ~~Biddable plans and specifications of the approved wastewater treatment facility~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~alternative; and~~ (3-15-85)

~~iii. A plan of operation and project schedule; and~~ (3-15-85)

~~iv. A user charge, sewer use ordinance and financial management system; and~~ (3-15-85)

~~v. A staffing plan and budget.~~ (3-15-85)

~~f. Step 4 Design and Construction. Application grantees must submit all documentation specified in Subsection 040.02.e. prior to advertising for bids on construction contracts.~~ (5-3-03)

~~g.~~ Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application. (5-3-03)

~~h.~~ A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041. (5-3-03)

~~i.~~ A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code. (5-3-03)()

~~j.~~ A statement regarding how the non-grant portion of the project will be funded. (5-3-03)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 040.02. (5-3-03)

~~**04. Phasing of Project.** Project phasing will be allowed through agreement between the municipality and the Department or as may be required by availability of funds.~~ (1-1-82)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

054. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

065. Reapplication for Grant. The action of disapproving, recalling or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when project deficiencies are resolved and project readiness is secured, provided the applicant remains on the approved priority list. (10-6-88)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning, ~~or designing and/or constructing~~ wastewater treatment facilities; (5-3-03)()

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 041.065. (5-3-03)()

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or ~~preliminary~~ engineering report for design ~~and construction~~ of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. (5-3-03)()

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections ~~67-2801 et seq., 67-2320, 50-341 59-1026,~~ and 42-3212, Idaho Code. (5-3-03)()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses ~~of local government~~ such as salaries and expenses of a mayor, city council members or a city attorney; (5-3-03)()

b. ~~Costs under construction contracts bid and executed in compliance with state public works construction laws;~~ (5-3-03)

eb. ~~Contracts for Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract;~~ (5-3-03)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

- ~~dc.~~ Planning directly related to the water pollution control projects; (5-3-03)
- ~~ed.~~ Sewer system evaluations; (5-3-03)
- ~~fe.~~ Financial and management capability analysis; (5-3-03)
- ~~gf.~~ Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)
- ~~h.~~ *Landscaping;* (5-3-03)
- ~~i.~~ *Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay;* (5-3-03)
- ~~j.~~ *Material acquired, consumed, or expended specifically for the project;* (5-3-03)
- ~~k.~~ *A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;* (5-3-03)
- ~~l.~~ *Preparation of an operation and maintenance manual;* (5-3-03)
- ~~m.~~ *Preparation of a plan of operation;* (5-3-03)
- ~~n.~~ *Start-up services;* (5-3-03)
- ~~o.~~ *Project identification signs;* (5-3-03)
- ~~pg.~~ Public participation for alternative selection; (5-3-03)
- ~~qh.~~ Development of user charge and financial management systems; (5-3-03)
- ~~ri.~~ Development of sewer use ordinance or resolution; (5-3-03)(____)
- ~~sj.~~ Staffing plans and budget development; (5-3-03)
- ~~tk.~~ Certain direct and other costs as determined eligible by the Department; (5-3-03)
- ~~ul.~~ Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
- ~~vm.~~ Costs of complying with the ~~F~~ederal Water Pollution Control Act (P.L. 92-500) as amended Clean Water Act, 33 U.S.C Sections 1251 et seq., loan requirements applied to specific projects; and (5-3-03)(____)
- ~~wn.~~ Site acquisition costs, including sewer right of way, sewage treatment plant site, sanitation landfills and sludge disposal areas services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and for land for

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

purchase through future State Revolving Fund loan funding. (5-3-03)()

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

~~**b.** Bonus payments not legally required for completion of construction before a contractual completion date;~~ (5-3-03)

~~**b.**~~ **eb.** Personal injury compensation or damages arising out of the project; (5-3-03)

~~**dc.**~~ **dc.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

~~**ed.**~~ **ed.** Costs outside the scope of the approved project; (5-3-03)

~~**fe.**~~ **fe.** Ordinary operating expenses ~~of local government,~~ such as salaries and expenses of a mayor, city council members, ~~or city attorney, or district personnel costs and acquiring project funding; and~~ (5-3-03)()

~~**g.**~~ **g.** ~~Construction of privately owned wastewater treatment facilities;~~ (5-3-03)

~~**h.**~~ **h.** ~~Cost of land in excess of that needed for the proposed project.~~ (5-3-03)

~~**if.**~~ **if.** Cost of refinancing existing indebtedness. (5-3-03)

06. Notification Regarding Eligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, ~~such as construction costs.~~ Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)()

042. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant ~~will~~ shall complete an environmental ~~information document (EID)~~ review as part of and in conjunction with an engineering report or a facility plan. ~~The review will be done in accordance with~~ Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall ~~also~~ consult with the Department at an early stage in the preparation of the engineering report or facility plan to determine the required level of environmental review. ~~The~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~environmental information document (EID) will include, as a minimum, the following~~ Based on review of existing information and assessment of environmental impacts, the applicant shall complete one of the following, per the Department's instruction: (5-3-03)()

~~a. Description of purpose and need for proposed action~~ Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-3-03)()

~~b. Description of the proposed alternative, including the proposed action~~ Prepare an Environmental Information Document (EID) in a format specified by the Department; or (5-3-03)()

~~c. Description of the affected environment;~~ Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-3-03)()

~~d. Discussion of the environmental impacts of the proposed action;~~ (5-3-03)

~~e. The means to mitigate adverse environmental impacts;~~ (5-3-03)

~~f. Description of public participation process;~~ (5-3-03)

~~g. List of referenced documents;~~ (5-3-03)

~~h. List of agencies consulted; and~~ (5-3-03)

~~i. Mailing list of interested parties.~~ (5-3-03)

02. Department Action. ~~Based on review of the environmental information document (EID), the Department shall take one (1) of the following actions~~ **Categorical Exclusion.** If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (5-3-03)()

~~a. Issue a Categorical Exclusion (CE) with supporting documentation~~ Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department shall publish a notice of CE in a local newspaper, following which the engineering report or facility plan can be approved; or (5-3-03)()

~~b. Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or~~ Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID. (5-3-03)()

~~c. Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

~~EIS. A final EIS following the public comment period must be submitted to the Department for approval.~~ (5-3-03)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. ()

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or draft a "finding of no significant impact" (FONSI). ()

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. ()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: ()

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ()

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and ()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The engineering report or facility plan can be completed once the final EIS has been approved by the Department. ()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

037. Use of Environmental Reviews ~~Prepared~~ Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, ~~it~~ at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (5-3-03)()

048. Validity of Review. Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (5-3-03)

a. Reaffirm the earlier decision; or (5-3-03)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (5-3-03)

043. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered to successful applicants by representatives of the Department or by registered mail. (3-15-85)

02. Acceptance of Grant Offer. Applicants have ~~thirty~~ sixty (360) days in which to officially accept the grant offer on prescribed forms furnished by the State. The ~~thirty~~ sixty (360) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the ~~thirty~~ sixty (360) day period the grant funds may be offered to the next project of priority. (3-15-85)()

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-15-85)

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of the project. Some eligible costs may be estimated and the grant payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to: (3-15-85)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

- a. Terms consistent with this chapter and consistent with the Step covered by the grant offer; and (12-31-91)
- b. Special clauses as determined necessary by the Department for the successful investigation, design, ~~construction~~ and management of the project; and (~~3-15-85~~)()
- c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans, and design ~~and construction~~; and (~~3-15-85~~)()
- d. Requirement for the prime engineering firm(s) ~~and their principals~~ retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (~~5-3-03~~)()
- e. The project documents shall be ~~bid, contracted and constructed according to in~~ accordance with the current edition of Idaho Standards for Public Works Construction (ISPWC) unless the grantee otherwise has approved and adopted acceptable public works construction standards approved by the Department. (~~5-3-03~~)()

051. -- 059. (RESERVED).

060. PAYMENTS.

01. **Payments for State Grants.** Requests for payment will be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (5-3-03)
02. **Limitations on Advance Payments.** Advanced payment will not be made on a project unless a written request from the grantee for a waiver is approved by the Board. (10-6-88)
03. **Grant Increases.** Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-15-85)
04. **Increases for Bid Underestimates.** Increases for bid underestimates may be considered for grant increase; however, errors of omission or engineering consultant errors will not be considered. (10-6-88)
05. **Grant Decreases.** If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-15-85)
06. **Final Project Review to Determine Actual Eligible Costs.** The Department may conduct a final project review to determine the actual eligible costs. The financial records of the

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

grantee may be reviewed by the Department. ~~The review may be deferred until the review of the design/construction loan is performed.~~ (5-3-03)()

07. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the project review has been completed or deferred, or after final inspection, if the grant provides funding for construction, final approval of the engineering, or completion of the environmental review process ~~and final project review have been completed or deferred.~~ (5-3-03)()

061. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including its engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (5-3-03)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-15-85)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-6-85)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-15-85)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction;~~ or (3-15-85)()

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-15-85)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-15-85)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-15-85)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

(3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the causes(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-15-85)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-15-85)

081. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration by the entity requesting the waiver that: (10-6-88)

01. Public Health Hazard. A significant public health hazard exists; or (10-6-88)

02. Groundwater Contamination. A significant groundwater contamination problem exists; or (10-6-88)

03. Point Source Pollution. A significant point source of pollution exists, causing a violation of the Idaho Department of Environmental Quality rules, *for* IDAPA 58.01.02, "Water Quality Standards," *and wastewater treatment requirements; or* (10-6-88)()

~~**04. Affordability Criteria.** The project will exceed affordability criteria, acceptable to the Department, in the event that the waiver is not granted.~~ (10-6-88)

082. -- 9959. (RESERVED).

~~996. ADMINISTRATIVE APPEALS.~~

~~Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."~~ (5-3-03)

~~997. CONFIDENTIALITY.~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ (3-15-02)

~~998. INCLUSIVE GENDER.~~

~~As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires.~~ (3-15-85)

~~999. SEVERABILITY.~~

~~Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Facility Grants," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter.~~ (1-3-78)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 154 through 160. The agency received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/haz_waste/58_0105_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact John Brueck at john.brueck@deq.idaho.gov, (208)373-0458.

Dated this 11th day of October, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
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ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules and Standards for Hazardous Waste

Docket No. 58-0105-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community.

This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2007. In addition, this proposed rule includes technical corrections and clarifies that, for the purpose of 40 CFR 261.41(a), Regional Administrator means U.S. Environmental Protection Agency Region 10 Regional Administrator.

Hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules and Standards for Hazardous Waste

Docket No. 58-0105-0701
PENDING RULE

N/A

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208) 373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2006⁷, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-30-07)~~(____)

01. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (3-30-07)

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules and Standards for Hazardous Waste

Docket No. 58-0105-0701
PENDING RULE

c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255,
(208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (3-30-07)(____)

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), except remanded waste codes "K064, K065, K066, K090 and K091" listed in 40 CFR Part 261 Appendix VII, ~~except "49 CFR 173.300" in 40 CFR 261.21(a)(3) as replaced with "49 CFR 173.115 or equivalent test methods in Chapter 7 of SW-846," except "49 CFR 173.151" in 40 CFR 261.21(a)(4) as replaced with "49 CFR 173.127"~~ and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.41(a), Regional Administrator shall be defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. (3-30-07)(____)

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules and Standards for Hazardous Waste****Docket No. 58-0105-0701
PENDING RULE**

initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules and Standards for Hazardous Waste

Docket No. 58-0105-0701
PENDING RULE

which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill.

(3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be:

(3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or

(3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA.

(3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.

(3-16-96)

d. Delisting Levels.

(3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06		mercury	0.009
arsenic	0.50		nickel	1
barium	7.60		selenium	0.16
beryllium	0.010		silver	0.30
cadmium	0.050		thallium	0.020
chromium	0.33		vanadium	2
lead	0.15		zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.

(3-16-96)

e. Modification of Treatment Process.

(3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification.

(3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification.

(3-16-96)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules and Standards for Hazardous Waste

**Docket No. 58-0105-0701
PENDING RULE**

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified.

(3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706.

(3-16-96)

f. Records and Data Retention and Submittal.

(3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated.

(3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA.

(3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department.

(3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion."

(3-16-96)

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from Envirosafe Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to Envirosafe Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc.

(3-15-02)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation by Reference. 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules and Standards for Hazardous Waste

Docket No. 58-0105-0701
PENDING RULE

as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.21, 262.51, 262.53, 262.54(e), 262.54(g)(1), 262.60, and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. ~~(3-30-07)~~(____)

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States.

~~(3-30-07)~~(____)

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71(a)(3) and 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

~~(3-30-07)~~(____)

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, "The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part," are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71(a)(3) and 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

~~(3-30-07)~~(____)

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006⁷.

~~(3-30-07)~~(____)

011. LAND DISPOSAL RESTRICTIONS.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules and Standards for Hazardous Waste

Docket No. 58-0105-0701
PENDING RULE

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) In 40 CFR 268.48(a), the entry for “2,4,6-Tribromophenol” is excluded. ~~(3-30-07)~~(____)

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. ~~(3-30-07)~~(____)

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~, except that 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(3-30-07)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation by Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(3-30-07)~~(____)

02. Used Oil as a Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules and Standards for Hazardous Waste**Docket No. 58-0105-0701**
PENDING RULE

application to EPA. This petition to the State must: (2-11-94)

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-30-07~~)(____)

017. (RESERVED).

018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.

40 CFR Part 267 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. (~~3-30-07~~)(____)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.07 - RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

DOCKET NO. 58-0107-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 88, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 5, 2007, Vol. 07-9, pages 310 through 321. After consideration of public comments, the rule has been revised at Sections 001, 004, 010, 100, 300, 400, 500, and 600. The remainder of the rule has adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/ust/58_0107_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Orville Green at orville.green@deq.idaho.gov, (208)373-0278 or Rick Jarvis at rick.jarvis@deq.idaho.gov, (208)373-0247.

Dated this 15th day of November, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapters 1 and 88, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

October 2, 2007 at 3:30 p.m.
Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: Under House Bill 33, the 2007 Idaho Legislature enacted the Idaho Underground Storage Tank Act, Chapter 88, Title 39, Idaho Code, which implements the federal Underground Storage Tank Compliance Act of 2005. DEQ has been directed by the Idaho Legislature to promulgate rules necessary to regulate underground storage tank (UST) systems in the state of Idaho. This proposed rule includes the following:

- 1. Incorporation by reference of 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, except that references to hazardous substances are expressly excluded from incorporation by reference;**
- 2. Inspection and certification of petroleum USTs;**
- 3. Owner and operator training;**
- 4. Release prevention, detection, compliance and enforcement;**
- 5. Delivery prohibitions;**
- 6. Additional measures to protect ground water, such as secondary containment for new or replacement petroleum UST systems or connecting pipes; and**
- 7. Development of a database system for petroleum UST information status.**

Cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, representatives of the Idaho Petroleum Storage Tank Fund Board of Trustees, and citizens of the state of Idaho may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

N/A

IDAHO CODE 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On July 4, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-7, page 89, and a preliminary draft rule was made available for public review. One meeting was held on July 19, 2007. Several members of the public attended the meeting and submitted written comments which resulted in revisions to the preliminary draft rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Orville Green at orville.green@deq.idaho.gov, (208)373-0278 or Rick Jarvis at rick.jarvis@deq.idaho.gov, (208)373-0247.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 3, 2007.

Dated this 3rd day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 58 TITLE 01 CHAPTER 07

58.01.07 - RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

000. LEGAL AUTHORITY.

Chapters 1 and 88, Title 39, Idaho Code, grant authority to the Board of Environmental Quality to promulgate rules for the regulation of underground storage tank systems within the state of Idaho.
()

001. TITLE AND SCOPE.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

01. Title. These rules shall be cited as IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems.” ()

02. Scope. These rules establish standards and procedures necessary for the regulation of underground storage tank systems. Compliance with these rules shall not relieve persons from the obligation to comply with other applicable state or federal laws. ()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

003. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. INCORPORATION BY REFERENCE.

Any reference to any document identified in Subsection 004.01 shall constitute the full adoption by reference into IDAPA 58.01.07. ()

01. Documents Incorporated by Reference. Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280, revised as of July 1, 2007. ()

02. Hazardous Substance Underground Storage Tank Systems. ()

a. The following items *only apply to hazardous substance underground storage tank systems and do not apply to petroleum underground storage tank systems*: ()

i. The definition of “Hazardous substance UST system” in 40 CFR 280.12 and use of this term or regulations regarding hazardous substance in 40 CFR Part 280; and ()

ii. 40 CFR 280.42 and any reference to 40 CFR 280.42 in 40 CFR Part 280. ()

b. *All other provisions of 40 CFR Part 280 and all provisions of IDAPA 58.01.07 shall apply to hazardous substance underground storage tank systems.* ()

03. Consistency. In the event of conflict or inconsistency between the language in IDAPA 58.01.07 and that found in 40 CFR Part 280, IDAPA 58.01.07 shall prevail. ()

04. Stringency. IDAPA 58.01.07 shall be no more stringent than federal law or regulations governing underground storage tank systems. ()

05. Availability of Referenced Material. The federal regulations adopted by reference can be obtained at the following locations: ()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

a. U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and ()

b. Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

005. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.07, "Rules Regulating Underground Storage Tank Systems," the following definitions apply: ()

01. **Board.** The Idaho Board of Environmental Quality. ()

02. **Community Water System.** A public water system that serves at least fifteen (15) service connections used by year-round residents of the area served by the system or regularly serves at least twenty-five (25) year-round residents. ()

03. **Department.** The Idaho Department of Environmental Quality. ()

04. **Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. ()

05. **Existing.** *Solely for purposes of determining when secondary containment is required, existing is when a petroleum underground storage tank, piping, motor fuel dispensing system, facility, public water system or potable drinking water well is in place when a new installation or replacement of a tank, piping, or motor fuel dispensing system begins.* ()

06. **EPA.** The United States Environmental Protection Agency. ()

07. **Installation of a New Motor Fuel Dispenser System.** The installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the petroleum underground storage tank system. This equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser, below the shear valve, and connect the dispenser to the piping. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the petroleum underground storage tank system. ()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

08. Installer. Any person who installs a new or replacement petroleum underground storage tank system. ()

09. Motor Fuel. Petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of petroleum-blended gasohol, and is typically used in the operation of a motor engine. This includes blended petroleum motor fuels such as biodiesel and ethanol petroleum blends. ()

10. New Underground Storage Tank. Has the same meaning as “underground storage tank or UST” in 40 CFR 280.12, except that such term includes tanks that have been previously used and meet the requirements of 40 CFR 280.20(a). ()

11. Non-Community Water System. A public water system that is not a community water system. A non-community water system is either a transient non-community water system or a non-transient non-community water system. ()

12. Person. An individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. “Person” also includes a consortium, a joint venture, a commercial entity, and the United States government. ()

13. Piping. A hollow cylinder or a tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated petroleum substances from the petroleum underground storage tank(s) to the dispenser(s) or other end-use equipment. It does not mean vent, vapor recovery, or fill lines that do not routinely contain regulated petroleum substances. ()

14. Potable Drinking Water Well. Any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which supplies water for a non-community public water system or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. ()

15. Product Deliverer. Any person who delivers or deposits product into a petroleum underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities. ()

16. Public Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.” ()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

17. Red Tag. A tamper-resistant tag, device, or mechanism attached to the tank's fill pipes that clearly identifies a petroleum underground storage tank as ineligible for product delivery. The tag or device shall be visible to the product deliverer and shall clearly state that it is unlawful to deliver to, deposit into, or accept product into the ineligible petroleum underground storage tank. ()

18. Repair. *Solely for purposes of determining when secondary containment is required,* as it applies to petroleum underground storage tanks, piping, and motor fuel dispensers systems, repair means any activity that does not meet the definition of replace. ()

19. Replace. As it applies to petroleum underground storage tanks and piping, replace is defined as follows: ()

a. Petroleum Underground Storage Tank. Replace means to remove an existing tank and install a new tank. ()

b. Piping. Replace means to remove and put back in one hundred (100) percent of the piping, excluding connectors, connected to a single petroleum underground storage tank system. This definition does not alter the requirement in 40 CFR 280.33(c) to replace metal pipe sections and fittings that have released product as a result of corrosion or other damage. A replacement of metal pipe section and fittings pursuant to 40 CFR 280.33(c) shall be considered a replacement under this definition only if one hundred (100) percent of the metal piping, excluding connectors, is replaced. ()

20. Secondary Containment. A release detection and prevention system that meets the requirements of 40 CFR 280.43(g). The piping shall have an inner and outer barrier and a method of monitoring the space between the inner and outer barriers for a leak or release. ()

21. Under-Dispenser Spill Containment. Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water. Such containment must: ()

a. At installation or modification, be liquid-tight on its sides, bottom, and at any penetrations; *and* ()

b. Be compatible with the substance conveyed by the piping; *and either* ()

c. Allow for visual inspection and access to the components in the containment system; or ()

d. Be monitored for releases *using a release detection method* that meets the requirements of 40 CFR 280.43(g). ()

011. – 099. (RESERVED).

100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

- 01. Notification.** An owner, operator or designee must: ()
- a.** Provide written notice to the Department thirty (30) days prior to the installation of a new piping system or a new or replacement petroleum underground storage tank. ()
- b.** Provide notice to the Department twenty-four (24) hours prior to the installation of a replacement piping system. ()
- 02. Notification Forms.** The written notice required in Subsection 100.01.a. shall be made upon forms provided by the Department. ()
- 03. Requirements for Petroleum UST Systems.** Owners, operators, and installers of a new or replacement petroleum underground storage tank or piping system shall comply with the following requirements. ()
- a.** Each new petroleum underground storage tank, or piping connected to any such new tank, installed after February 23, 2007, or any existing petroleum underground storage tank, or existing piping connected to such existing tank, that is replaced after February 23, 2007, shall have secondary containment and be monitored for leaks if the new or replaced petroleum underground storage tank or piping is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. *At a minimum, secondary containment systems must be designed, constructed, and installed to contain regulated substances released from the tank system until they are detected and removed, prevent the release of regulated substances to the environment at any time during the operational life of the petroleum underground storage tank system, and be checked for evidence of a release at least every thirty (30) days.* The following conditions are excluded: ()
- i.** Suction piping that meets the requirements of 40 CFR 280.41(b)(2)(i) *through* (v); ()
- ii.** Piping that manifolds two (2) or more petroleum underground storage tanks together; ()
- iii.** Existing piping to which new piping is connected to install a dispenser; *and* ()
- iv.** Tanks identified in 40 CFR 280.10(b). ()
- b.** If the owner installs, within one (1) year, a potable drinking water well at the new facility that is within one thousand (1,000) feet of the petroleum underground tanks, piping, or motor fuel dispenser system as part of the new underground storage tank facility installation, secondary containment and under-dispenser containment are required, regardless of whether the well is installed before or after the petroleum underground tanks, piping, and motor fuel dispenser system are installed. ()
- c.** The notice required in Subsection 100.01 shall indicate whether the new or replacement installation is within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well. If the owner and installer certify that the installation is

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

not within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well, the owner, operator or designee shall provide and maintain documentation showing that a reasonable investigation of water systems and drinking water wells was undertaken. A reasonable investigation includes, but is not limited to, a search of the records of:

()

i. The public or private water service provider in the area which the new or replacement installation is located (if any); ()

ii. The city or county in which the new or replacement installation is located; ()

iii. The Idaho Department of Water Resources; and ()

iv. The Idaho Department of Environmental Quality. ()

d. In the case of a replacement of an existing petroleum underground storage tank or existing piping connected to the petroleum underground storage tank, Section 100 shall apply only to the specific petroleum underground storage tank or piping being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. ()

e. Each installation of a new motor fuel dispenser system shall include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. ()

04. Requirements for Hazardous Substance UST Systems. Owners, operators, and installers of a new or replacement hazardous substance underground storage tank or piping system shall have secondary containment as required in 40 CFR 280.42. ()

05. Certification. Owners and operators shall also comply with the certification requirements of 40 CFR 280.22(f) as incorporated by reference into these rules. ()

101. -- 199. (RESERVED).

200. RELEASE REPORTING REQUIREMENTS

01. Information to be Reported. ()

a. In addition to the requirements in IDAPA 58.01.02, "Water Quality Standards," Subsection 851.01, owners or operators shall report the following information regarding confirmed petroleum underground storage tank releases to the Department on forms provided by the Department: ()

i. The release source; and ()

ii. The release cause. ()

b. Releases less than twenty-five (25) gallons that are cleaned up within twenty-four (24) hours, and which do not cause a sheen on nearby surface water, do not need to be reported.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

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02. Release Sources. Release sources may include, but are not limited to the following: ()

a. Petroleum Underground Storage Tanks; ()

b. Piping; ()

c. Dispensers, which include the dispenser and equipment used to connect the dispenser to the piping. A release from a suction pump or components located above the shear valve would be an example of a release from the dispenser; ()

d. Submersible turbine pump area, which includes the submersible turbine pump head (typically located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the petroleum underground storage tank; and ()

e. Delivery problem, which identifies releases that occurred during product delivery to the petroleum underground storage tank. Typical causes associated with this source are spills and overfills. ()

03. Release Causes. Release causes may include, but are not limited to the following: ()

a. Spills which may occur when the delivery hose is disconnected from the fill pipe of the petroleum underground storage tank or when the nozzle is removed from the vehicle at the dispenser; ()

b. Overfills which may occur from the fill pipe at the petroleum underground storage tank or when the nozzle fails to shut off at the dispenser; ()

c. Physical or mechanical damage of all types except corrosion. Examples include a puncture of the petroleum underground storage tank or piping, loose fittings, broken components, and components that have changed dimension like elongation or swelling; ()

d. Corrosion of a metal tank, piping, flex connector, or other component; and ()

e. Installation problem that occurs specifically because the underground storage tank system was not installed properly. ()

04. Requirements. The reporting required in Section 200 shall be reported to the Department within ninety (90) days of a confirmed release. The reporting requirement in Section 200 shall not relieve owners or operators from the obligation to comply with IDAPA 58.01.02, "Water Quality Standards," Section 851, "Petroleum Release Reporting, Investigation, and Confirmation," and IDAPA 58.01.02, "Water Quality Standards," Section 852, "Petroleum Release Response and Corrective Action." ()

201. -- 299. (RESERVED).

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

300. TRAINING REQUIREMENTS.

01. Requirements. The Department shall *adopt* a training program to help owners and operators comply with the requirements of these rules. The training program requirements shall: ()

a. Be consistent with 42 U.S.C. 6991i(a), as amended by the Underground Storage Tank Compliance Act, (Pub.L. 109-58, title XV, sec. 1524(a), Aug. 8, 2005); ()

b. Be developed in cooperation with petroleum underground storage tank owners and tank operators; ()

c. Take into consideration training programs implemented by petroleum underground storage tank owners and operators as of August 8, 2005; ()

d. Provide for training to be conducted on site or at another mutually convenient location; and ()

e. Be appropriately communicated to petroleum underground storage tank owners and operators. ()

02. Operator Designation. For each petroleum underground storage tank system regulated under these rules, the owner or operator shall: ()

a. Designate: ()

i. The class A operator, who is the individual(s) having primary responsibility for on-site operation and maintenance of the petroleum underground storage tank system. This does not require that the class A operator be on site; ()

ii. The class B operator, who is the individual(s) having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank system. This does not require that the class B operator be on site at all times; and ()

iii. The class C operator, who is the daily, on-site individual(s) having primary responsibility for addressing emergencies presented by a spill or release from the petroleum underground storage tank system. The class C operator can be designated by the class A or B operator. ()

b. Maintain a record at the facility where the petroleum underground storage tank is located listing each person designated in Subsections 300.02.a.i., 300.02.a.ii., and 300.02.a.iii. ()

c. Notify the Department in writing of the individual(s) designated in Subsections 300.02.a.i. and ii. within thirty (30) days of the designation. ()

03. Training. The owner or operator of each petroleum underground storage tank

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

system regulated under these rules shall ensure that the individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. participate in the training conducted by the Department or a state of Idaho approved third party. ()

a. The individual(s) identified in Subsections 300.02.a.i. or 300.02.a.ii. shall provide training to the persons identified in Subsection 300.02.a.iii. ()

b. The individual(s) identified in Subsection 300.02.a.iii. must be trained before assuming responsibility for responding to emergencies. ()

c. The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall repeat the training within thirty (30) days if the petroleum underground storage tank system for which they have responsibility is determined to be out of compliance with these rules. ()

04. Unattended Sites. In the case of unattended sites, a sign must be posted in a location visible from the dispensers indicating emergency shut-off procedures and emergency contact phone numbers. ()

301. -- 399. (RESERVED).

400. INSPECTIONS.

01. Department Authority. In order to fulfill the statutory requirements of Chapter 88, Title 39, Idaho Code, officers, employees or representatives of the Department, or third-party inspectors as described in Subsection 400.02, are authorized to inspect petroleum underground storage tanks, contents of the tanks, and associated equipment and records relating to such tanks, contents, and associated equipment. ()

02. Third-Party Inspections. ()

a. Third-party inspectors must be certified, licensed, or registered by an approved state program to perform on-site inspections. At a minimum, third-party inspectors must meet the requirements listed in Subsections 400.02.a.i. through 400.02.a.v.: ()

i. Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures; ()

ii. Successfully complete the state's required training program. The training program for third-party inspectors must be comparable to the training program for Department inspectors; ()

iii. Not be the owner or operator of the petroleum underground storage tank, an employee of the owner or operator of the petroleum underground storage tank, or a person having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank; ()

iv. Use an inspection report form developed by the Department. Review of applicable records and other activities that can be accomplished off-site may be combined with activities

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

conducted at the site to fulfill the on-site inspection requirement; and ()

v. Complete and submit the inspection report to the Department in the manner and time frame established by the Department. *All third-party inspection reports must be submitted electronically to the Department for review and for the Department to make a compliance determination for each site. If requested by the Department, third-party inspectors shall provide all supporting documentation for its inspection reports.* ()

b. Third-party inspection procedures must contain an audit program, developed by the Department, to monitor third-party inspectors on a routine basis. The audit program must include a sufficient number of on-site inspections to effectively assess inspector performance. ()

c. If a third-party inspector fails to demonstrate to the approved state program adequate competence and proficiency to perform petroleum underground storage tank inspections, or the approved state program otherwise determines it is not appropriate for the third-party inspector to conduct on-site inspections as part of a third-party inspection program, the approved state program *must* take appropriate action against the third-party inspector as provided by law. ()

03. Inspections. All inspections shall be done in accordance with the provisions of Section 39-108, Idaho Code. At a minimum, an on-site inspection must assess compliance with the following: ()

a. Notification; ()

b. Corrosion protection; ()

c. Overfill prevention in place and operational; ()

d. Spill prevention in place and operational; ()

e. Tank and piping release detection; ()

f. Reporting suspected releases; ()

g. Records of tank and piping repairs; ()

h. Secondary containment where required; ()

i. Financial responsibility; and ()

j. Temporary closure. ()

401. -- 499. (RESERVED).

500. DELIVERY PROHIBITION.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

01. Prohibition. Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into a petroleum underground storage tank at a facility which has been identified by the Department to be ineligible for such delivery, deposit, or acceptance. ()

02. Classification as Ineligible. The Department shall classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance as soon as practicable after the Department determines one or more of the following conditions exists: ()

- a. Required spill prevention equipment is not installed; ()
- b. Required overfill protection equipment is not installed; ()
- c. Required leak detection equipment is not installed; or ()
- d. Required corrosion protection equipment is not installed. ()

03. Warning of Violations. The Department may classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance if the owner or operator of the tank has been issued a written warning for any of the following violations, and the owner or operator fails to initiate corrective action within thirty (30) days of the issuance of the written warning, unless the deadline is extended by the Department: ()

- a. Failure to properly operate or maintain leak detection equipment; ()
- b. Failure to properly operate or maintain spill, overfill, or corrosion protection equipment; *or* ()
- c. Failure to maintain financial responsibility. ()

04. Service of Notice. If the Department classifies a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance pursuant to Subsections 500.02 or 500.03, the Department shall provide a written notice of the determination to the owner or operator prior to prohibiting the delivery, deposit, or acceptance of a regulated petroleum substance. Notice is considered properly served by the Department in any of the following ways: ()

- a. The notice is personally delivered to the owner or operator; or ()
- b. The notice is clearly posted at a public entrance to the facility where the petroleum underground storage tank is located and a copy of the notice is also sent by *certified* mail to the last known address of the owner or operator. ()

05. Red-Tagging. Once service of the written notice of the ineligible determination is complete, the Department shall then attach a red tag to each fill pipe of the ineligible petroleum underground storage tank clearly identifying the tank as ineligible. The Department shall also maintain a list of all petroleum underground storage tanks that are classified as ineligible for

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

delivery, deposit, or acceptance of a regulated petroleum substance. The Department shall make the list available to the public by posting the list on the Department's website at www.deq.idaho.gov. ()

06. Written Notice. The written notice required by Subsection 500.04 must include: ()

a. The specific reasons or violations that led to the ineligible classification; ()

b. A statement notifying the owner and operator that the petroleum underground storage tank is ineligible for delivery and it is unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into the petroleum underground storage tank; ()

c. *The effective date the petroleum underground storage tank is deemed ineligible for delivery;* ()

d. The name and address of the department representative to whom a written request for re-inspection can be made, if a re-inspection is necessary; ()

e. A statement regarding the right to appeal the Department's action regarding ineligible classification pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality"; and ()

f. The option to request a compliance conference pursuant to Subsection 500.07. ()

07. Compliance Conference. The owner or operator may request a compliance conference with the Department within fifteen (15) days of receipt of the notice. A compliance conference shall be scheduled within twenty (20) days and conducted in an informal manner by the Department. At the compliance conference, the owner or operator may explain why he believes the petroleum underground storage tank should not be classified as ineligible. *During the compliance conference, the owner or operator and the Department will identify and establish appropriate acts and a time schedule for compliance as necessary.* ()

08. Duration of Ineligible Classification. The classification of a petroleum underground storage tank as ineligible shall remain in effect until the conditions cited in the notice no longer exist. If the Department determines that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated petroleum substance, the Department or an authorized designee shall, as soon as practicable, remove the red tag from the petroleum underground storage tank and also remove the petroleum underground storage tank from the ineligible list posted on its website. *The Department will also send a written notice to the owner and operator that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated petroleum substance.* ()

09. Declining Classification. The Director may decline to classify a petroleum underground storage tank as ineligible if the Director decides that classifying the petroleum underground storage tank as ineligible for delivery, deposit, or acceptance is not in the best interest of the public. ()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

a. The Director may only defer application of delivery prohibition for up to one hundred eighty (180) days after determining a petroleum underground storage tank is ineligible for delivery, deposit, or acceptance of a regulated petroleum substance. ()

b. The Director may authorize the delivery, deposit, or acceptance of product into an ineligible petroleum underground storage tank if such activity is necessary to test or calibrate the underground storage tank or dispenser system. ()

10. Department Authority. Nothing in Section 500 shall affect or preempt the authority of the Department to prohibit the delivery, deposit, or acceptance of a regulated petroleum substance to a petroleum underground storage tank under other existing authorities. ()

11. Proper Notice. A person shall not be in violation of Subsection 500.01 if the Department fails to provide the notice required by Subsections 500.04 and 500.05. ()

12. Unlawful to Tamper with Red Tag. It shall be unlawful for any person to tamper with and/or remove the red tag without the Department's approval. ()

501. -- 599. (RESERVED).

600. PETROLEUM UNDERGROUND STORAGE TANK DATABASE.

01. Maintenance. The Department shall maintain a database which provides details on the status of all petroleum underground storage tanks in the state of Idaho which are subject to regulation. The database shall be updated no less than *the end of each calendar quarter*. ()

02. Identification. The database shall identify any tanks subject to delivery prohibition. ()

03. Petition. Petroleum underground storage tank owners or operators may petition the Department to correct any inaccurate information for their tanks and the Department shall correct any such inaccurate information *within thirty (30) days after verification*. ()

04. Availability. The database shall be available to the public on the Department's website at www.deq.idaho.gov. ()

601. -- 999. (RESERVED).

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 161 through 181. After consideration of public comments, the proposed rule has been revised at Subsection 100.01.e.iv. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/drinking_water/58_0108_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tom John at thomas.john@deq.idaho.gov, (208)373-0191.

Dated this 11th day of October, 2007.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The U.S. Environmental Protection Agency promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule on January 4, 2006, and the Long Term 2 Enhanced Surface Water Treatment Rule on January 5, 2006. These are national primary drinking water regulations. As a state that has primacy for administering the Safe Drinking Water Act, Idaho must adopt these rules within two years of promulgation.

1. **Stage 2 Disinfectants and Disinfection Byproducts Rule, 40 CFR Part 141, Subparts U and V:** Requires public water systems that add a chemical disinfectant to their water to conduct distribution system evaluations aimed at identifying sites within the system that are subject to high levels of disinfection byproducts (DBP). These byproducts are formed when chemical disinfectants such as chlorine combine with naturally occurring organic matter in the water. Based upon the results of distribution system evaluation, systems are required to prepare and implement a revised DBP monitoring plan that will ensure more equitable protection of customers from these contaminants.
2. **Long Term 2 Enhanced Surface Water Treatment Rule, 40 CFR Part 141, Subpart W:** Requires systems that use surface water to monitor their source water in order to assess the occurrence of cryptosporidium, an important waterborne pathogen. Systems that find high levels of this organism in their source water will be required to provide additional treatment to ensure adequate removal and/or inactivation of cryptosporidium.

As a primacy agency, DEQ must adopt state rules that are no less stringent than the federal regulations. Under direction from the Idaho Legislature, DEQ must adopt state rules that are no more stringent than the federal regulations. To ensure that Idaho's rules will be neither more nor less stringent than the federal regulations, the proposed rule incorporates by reference the necessary federal regulations. Drinking water system owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, and the public at large may be interested in commenting on this proposed rule.

While not part of this rulemaking, DEQ is also seeking public comment on two guidance documents: "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule" and "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule." These documents provide assistance to public water system

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

owners and operators in understanding and achieving compliance with the requirements of these rules and may be obtained at http://www.deq.idaho.gov/rules/drinking_water/58_0108_0701_proposed.cfm or by contacting Tom John at thomas.john@deq.idaho.gov or (208)373-0191.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: On April 4, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-4, pages 27 through 28, and a preliminary draft rule and issue paper describing the special primacy requirements were made available for public review. A meeting was held on April 24, 2007. No members of the public attended the meeting and no comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tom John, thomas.john@deq.idaho.gov, (208)373-0191.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007. Comments on the guidance documents may also be submitted to the undersigned.

Dated this 1st day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

002. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIALS.

01. Incorporation by Reference. The following documents are incorporated by reference into these rules. (4-11-06)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

**Docket No. 58-0108-0701
PENDING RULE**

a. 40 CFR Parts 141 and 143. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection of 40 CFR Parts 141 and 143 shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules. (4-11-06)

b. American Water Works Association (AWWA) Standards, effective July 2006, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337. (3-30-07)

02. Availability of Specific Referenced Material. Copies of specific documents referenced within these rules are available at the following locations: (4-11-06)

a. All federal regulations: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202)783-3238; U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206) 553-4270; or <http://www.gpoaccess.gov/index.html>. (4-11-06)

b. All documents incorporated by reference: Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (4-11-06)

c. Recommended Standards for Water Works: a report of the Water Supply Committee of the Great Lakes -- Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, published by Health Education Services, P.O. Box 7126, Albany, New York 12224, 2003, Telephone (518) 439-7286. (4-6-05)

d. Manual of Individual and Non-Public Water Supply Systems (EPA 570/9-91-004), published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.20402, Telephone (202) 782-3238. (5-3-03)

e. U.S. Department of Commerce, National Bureau of Standards Handbook, No. 69, "Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure" as amended in 1963, NCRP Publications, P.O. Box 20175, Washington, D.C. 20014. (12-10-92)

f. Rules of the Idaho Water Resources Board available at www.adm.idaho.gov/adminrules/rules/idapa37/37index.htm, or the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone (208) 287-4800. (3-30-07)

g. ANSI/NSF Standard 44-2002e -- 2004, Residential Cation Exchange Water Softeners, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)

h. ANSI/NSF Standard 53-2002e -- 2003, Drinking Water Treatment Units -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Public Drinking Water Systems**

**Docket No. 58-0108-0701
PENDING RULE**

- i.** ANSI/NSF Standard 55-2002 -- 2002, Ultraviolet Microbiological Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- j.** ANSI/NSF Standard 58-2003 -- 2004, Reverse Osmosis Drinking Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- k.** ANSI/NSF Standard 60-2000a -- 2000, Drinking Water Treatment Chemicals -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- l.** ANSI/NSF Standard 61-2000a -- 2000, Drinking Water System Components -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- m.** American Water Works Association (AWWA) Standards, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, (800) 926-7337, www.awwa.org. (3-30-07)
- n.** Cross Connection Control Manual, available from Pacific Northwest Section of the American Water Works Association, P.O. Box 19581, Portland, OR, 97280-0581, Telephone (503) 246-5845. (3-30-07)
- o.** Manual of Cross-Connection Control, Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, KAP-200 University Park MC-2531, Los Angeles, CA 90089-2531, (866)545-6340, www.usc.edu/dept/fccchr/. (3-30-07)
- p.** Manual on Slow Sand Filtration (1991), published by AWWA Research Foundation 6666 West Quincy Avenue, Denver, CO 80235, (800)926-7337, www.awwa.org. (3-30-07)
- q.** Slow Sand Filtration (1991), published by the American Society of Civil Engineers American Society of Civil Engineers, 1801 Alexander Bell Drive, Reston, VA 20191, (800)548-2723, www.asce.org. (3-30-07)
- r.** Slow Sand Filtration and Diatomaceous Earth Filtration for Small Water Systems, DOH Pub #331-204 (4/03), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm. (3-30-07)
- s.** Water System Design Manual, DOH Pub #331-123 (Rev. 8/01), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm. (3-30-07)
- t.** Submersible Motors: Application, Installation, Maintenance (Franklin Electric

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

AIM manual), Franklin Electric, Bluffton, Indiana 46714, (800)348-2420, <http://www.franklin-electric.com/Manual/pdf/fullAIM.pdf>. (3-30-07)

u. Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources (March 1991 Edition), U.S. Environmental Protection Agency, <http://www.epa.gov/safewater/mdbp/implement.html>. (3-30-07)

v. Standard Methods for the Examination of Water and Wastewater, a joint publication of the American Public Health Association, the Water Environment Federation, and the American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235, 800-926-7337, www.standardmethods.org. (3-30-07)

w. F480-02 Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension ratios (SDR), SCH 40 and SCH 80, American Society for Testing and Materials (ASTM Standard F480-02). (3-30-07)

x. "Idaho Standards for Public Works Construction," 2005 Edition, and subsequent revisions, Local Highway Technical Assistance Council, 3330 Grace Street, Boise, ID 83605, (208)344-0565. (4-11-06)

y. Memorandum of Understanding between the Idaho Department of Environmental Quality and the Idaho Division of Building Safety Plumbing Bureau, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. (3-30-07)

z. Idaho General Safety and Health Standards (IGSHS), available from the Idaho Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642, (208)334-3950, http://dbs.idaho.gov/safety_code/000.html. (3-30-07)

aa. Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

bb. Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

03. Precedence. In the event of conflict or inconsistency between the language in these rules and that found in any document incorporated by reference, these rules shall prevail. (4-11-06)

003. DEFINITIONS.

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2002~~6~~, are herein incorporated by reference except for the definition of the terms "action level," "disinfection," "noncommunity water system," and "person." (~~5-3-03~~)()

01. Action Level. The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

water, replace lead service lines, or undertake a public education program. (12-10-92)

02. Administrator. The Administrator of the United States Environmental Protection Agency. (4-5-00)

03. Annual Samples. Samples that are required once per calendar year. (12-10-92)

04. Annular Opening. As used in well construction, this term refers to the nominal inside diameter of the borehole minus the outside diameter of the casing divided by two (2). (3-30-07)

05. Aquifer. A geological formation of permeable saturated material, such as rock, sand, gravel, etc., capable of yielding an economic quantity of water to wells and springs. (5-3-03)

06. Available. Based on system size, complexity, and source water quality, a properly licensed operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner. (4-6-05)

07. Average Day Demand. The volume of water used by a system on an average day based on a one (1) year period. (3-30-07)

08. Backflow. The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. (12-10-92)

09. Bag Filters. Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside. ()

10. Bank Filtration. A water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s). ()

~~00~~**11. Board.** The Idaho Board of Environmental Quality. (5-3-03)

102. Capacity. The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: (4-5-00)

a. Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Training of operator(s) is required, as appropriate, for the system size and complexity. (4-6-05)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

b. Financial capacity means the financial resources of the water system, including an appropriate budget, rate structure, cash reserves sufficient for future needs and emergency situations, and adequate fiscal controls. (4-5-00)

c. Managerial capacity means that the management structure of the water system embodies the aspects of water treatment operations, including, but not limited to; (4-5-00)

i. Short and long range planning; (4-5-00)

ii. Personnel management; (4-5-00)

iii. Fiduciary responsibility; (4-5-00)

iv. Emergency response; (4-5-00)

v. Customer responsiveness; (4-5-00)

vi. Source water protection; (4-5-00)

vii. Administrative functions such as billing and consumer awareness; and (4-5-00)

viii. Ability to meet the intent of the federal Safe Drinking Water Act. (4-5-00)

13. Cartridge Filters. Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside. ()

14. Combined Distribution System. The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water. ()

145. Community Water System. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (12-10-92)

126. Components of Finished Water Storage. (3-30-07)

a. Dead Storage. Storage that is either not available for use in the system or can provide only substandard flows and pressures. (3-30-07)

b. Effective Storage. Effective storage is all storage other than dead storage and is made up of the additive components described in paragraphs 003.12.c. through 003.12.f. (3-30-07)

c. Operational Storage. Operational storage supplies water when, under normal conditions, the sources are off. This component is the larger of; (3-30-07)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

- i. The volume required to prevent excess pump cycling and ensure that the following volume components are full and ready for use when needed; or (3-30-07)
- ii. The volume needed to compensate for the sensitivity of the water level sensors. (3-30-07)
- d. Equalization Storage. Storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak hour demand. (3-30-07)
- e. Fire Suppression Storage. The water needed to support fire flow in those systems that provide it. (3-30-07)
- f. Standby Storage. Standby storage provides a measure of reliability or safety factor should sources fail or when unusual conditions impose higher than anticipated demands. (3-30-07)

137. Composite Correction Program (CCP). A systematic approach to identifying opportunities for improving the performance of water treatment and implementing changes that will capitalize on these opportunities. The CCP consists of two (2) elements: (4-5-00)

a. Comprehensive Performance Evaluation (CPE). A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. (4-5-00)

b. Comprehensive Technical Assistance (CTA). The implementation phase that is carried out if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. (4-5-00)

148. Compositing of Samples. The mixing of up to five (5) samples by the laboratory. (4-5-00)

159. Confining Layer. A nearly impermeable subsurface stratum which is located adjacent to one (1) or more aquifers and does not yield a significant quantity of water to a well. (5-3-03)

1620. Confirmation Sample. A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. (12-10-92)

1721. Connection. Each structure, facility, or single family residence which is connected

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

to a water system, and which is or could be used for domestic purposes, is considered a single connection. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. (10-1-93)

22. Consecutive System. A public water system that receives some or all of its finished water from one (1) or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. ()

223. Consumer. Any person served by a public water system. (12-10-92)

224. Consumer Confidence Report (CCR). An annual report that community water systems must deliver to their customers. The reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. (4-5-00)

205. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (12-10-92)

246. Cross Connection. Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. (10-1-93)

227. Dead End Main. A distribution main of any diameter and length that does not loop back into the distribution system. (3-30-07)

238. Department. The Idaho Department of Environmental Quality. (12-10-92)

249. Director. The Director of the Department of Environmental Quality or his designee. (12-10-92)

2530. Disinfection. Introduction of chlorine or other agent or process approved by the Department, in sufficient concentration or dosage, and for the time required to kill or inactivate pathogenic and indicator organisms. (3-30-07)

2631. Disinfection Profile. A summary of daily Giardia lamblia inactivation through the drinking water treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172 and 40 CFR 141.530-141.536. (5-3-03)

2732. Distribution System. Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-16-04)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

~~28~~33. Drinking Water. Means “water for human consumption.” (3-30-07)

~~29~~34. Drinking Water System. All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. (12-10-92)

35. Dual Sample Set. A set of two (2) samples collected at the same time and same location, with one (1) sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an Initial Distribution System Evaluation (40 CFR Part 141, Subpart U) and for determining compliance with the TTHM and HAA5 MCLs under the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). ()

~~30~~6. DWIMS. Idaho Department of Environmental Quality Drinking Water Information Management System. Replaced by SDWISS April 2001. (3-15-02)

~~31~~7. Enhanced Coagulation. The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment. Conventional filtration treatment is defined in 40 CFR 141.2. (5-3-03)

~~32~~8. Enhanced Softening. The improved removal of disinfection byproduct precursors by precipitative softening. (4-5-00)

~~33~~9. Exemption. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. (12-10-92)

~~34~~0. Facility Plan. The facility plan for a public drinking water system describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for infrastructure and includes a plan for the future of the system/facility, including upgrades and additions. It is usually updated on a regular basis due to anticipated or unanticipated growth patterns, regulatory requirements, or other infrastructure needs. A facility plan is sometimes referred to as a master plan or facilities planning study. In general, a facility plan is an overall system-wide plan as opposed to a project specific plan. (3-30-07)

~~35~~41. Facility Standards and Design Standards. Facility standards and design standards are described in Sections 500 through 552 of these rules. Facility and design standards found in Sections 500 through 552 of these rules must be followed in the planning, design, construction, and review of public drinking water facilities. (3-30-07)

~~36~~42. Fee Assessment. A charge assessed on public drinking water systems based on a rate structure calculated by system size. (10-1-93)

~~37~~43. Filter Profile. A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run,

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed. (4-5-00)

3844. Finished Water. Water that ~~has completed all treatment processes and is ready for delivery to consumers~~ is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals). (3-30-07)()

3945. Fire Flow Capacity. The water system capacity, in addition to maximum day demand, that is available for fire fighting purposes within the water system or distribution system pressure zone. Adequacy of the water system fire flow capacity is determined by the local fire authority. (3-30-07)

46. Flowing Stream. As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a course of running water flowing in a definite channel. ()

407. GAC10. Granular activated carbon filter beds with an empty bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with MCLs established in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V) shall be one hundred twenty (120) days. (4-5-00)()

48. GAC20. Granular activated carbon filter beds with an empty-bed contact time of twenty (20) minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty (240) days. ()

449. Groundwater System. A public water system which is supplied exclusively by a groundwater source or sources. (12-10-92)

4250. Groundwater Under the Direct Influence of Surface Water. Any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation. (5-3-03)

4351. Haloacetic Acids (Five) (HAA5). The sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) rounded to two (2) significant figures after addition. (4-5-00)

4452. Health Hazards. Any condition which creates, or may create, a danger to the

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. See also the definition of Significant Deficiency, which refers to a health hazard identified during a sanitary survey. (5-3-03)

453. Inorganic. Generally refers to compounds that do not contain carbon and hydrogen. (12-10-92)

4654. Laboratory Certification Reciprocity. Acceptance of a laboratory certification made by another state. Laboratory reciprocity may be granted to laboratories outside of Idaho after application, proof of home state certification, and EPA performance evaluation results are submitted and reviewed. Reciprocity must be renewed after a time specified by the Idaho Laboratory Certification Officer to remain valid. (4-5-00)

55. Lake/Reservoir. As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow. ()

4756. License. A physical document issued by the Idaho Bureau of Occupational Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code. (4-6-05)

57. Locational Running Annual Average (LRAA). The average of sample analytical results for samples taken at a particular monitoring location during the previous four (4) calendar quarters, as set forth in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). ()

458. Log. Logarithm to the base ten (10). (12-10-92)

459. Material Deviation. A change from the design plans that significantly alters the type or location of facilities, requires engineering judgment to design, or impacts the public safety or welfare. (4-11-06)

560. Material Modification. For the purpose of plan and specification review requirements as specified in Subsection 504.03, those modifications of an existing public water system that are intended to increase system capacity or alter the methods or processes employed. (3-30-07)

561. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (3-30-07)

562. Maximum Day Demand Rate. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest for the design year. (3-30-07)

563. Maximum Residual Disinfectant Level (MRDL). A level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. (4-5-00)

564. Maximum Residual Disinfectant Level Goal (MRDLG). The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. (4-5-00)

65. Membrane Filtration. A pressure or vacuum driven separation process in which particulate matter larger than one (1) micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis. ()

5566. Method Detection Limit (MDL). The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)

567. New System. Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. (4-5-00)

5768. Noncommunity Water System. A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (4-5-00)

5869. Non-Potable Mains. The pipelines that collect and convey non-potable discharges from or to multiple service connections. (4-11-06)

5970. Non-Potable Services. The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, reclaimed wastewater system, and other non-potable systems to individual consumers. (4-11-06)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

~~60~~71. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (12-10-92)

~~64~~72. Nuclear Facility. Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)

~~62~~73. Operating Shift. That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. (4-5-00)

~~63~~74. Owner/Purveyor of Water/Supplier of Water. The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers and/or is ultimately responsible for the public water system operation. (4-6-05)

~~64~~75. Peak Hour Demand. The highest hourly flow, excluding fire flow, that a water system or distribution system pressure zone is likely to experience in the design year. (3-30-07)

~~65~~76. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)

~~66~~77. Pesticides. Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algaecides. (12-10-92)

~~67~~8. Plant. A physical facility where drinking water or wastewater is treated or processed. (3-30-07)

79. Plant Intake. The works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant. (____)

~~68~~0. Point of Use (POU) Treatment Device. A treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap. (3-30-07)

~~69~~81. Point of Use (POU) Treatment System. A collection of POU treatment devices. (3-30-07)

~~70~~82. Potable Mains. Pipelines that deliver potable water to multiple service connections. (3-30-07)

~~71~~83. Potable Services. Pipelines that convey potable water from a connection to the potable water main to individual consumers. (3-30-07)

~~72~~84. Preliminary Engineering Report. The preliminary engineering report for a

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

public drinking water system facility is a report that addresses specific portions of the system or facility for which modifications are being designed. Modifications may include, but are not limited to, significant changes to existing processes or facilities, system expansion, addition of treatment, or installation of other processes and facilities. This report addresses specific purpose and scope, design requirements, alternative solutions, costs, operation and maintenance requirements, and other requirements as described in Section 503. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan, such as a facility plan. However, the preliminary engineering report shall describe modifications to the facility plan that may be required as a result of the proposed project. (3-30-07)

85. Presedimentation. A preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant. ()

7386. Public Notice. The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)

7487. Public Drinking Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." (4-6-05)

7588. Public Water System/Water System/System. Means "public drinking water system." (4-5-00)

7689. Pump House. An above-grade structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, well discharge line, or a treatment unit. Pump houses are often called well houses in common usage, even though in modern construction these structures may not contain either a well or a pump. These terms are used interchangeably in national standards and trade publications. (3-30-07)

7790. Quasi-Municipal Corporation. A public entity, other than community government, created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare. For the purpose of these rules, this term refers to drinking water districts. (4-11-06)

7891. Regulated Public Utility. For the purpose of these rules, any public water system that falls under the jurisdiction of the Idaho Public Utilities Commission and is subject to the rules thereof. (3-30-07)

792. Repeat Compliance Period. Any subsequent compliance period after the initial

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

compliance period. (12-10-92)

~~8093~~. Responsible Charge (RC). Responsible Charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants. (4-5-00)

~~8494~~. Responsible Charge Operator. An operator of a public drinking water system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. (4-6-05)

~~8295~~. Reviewing Authority. For those projects requiring preconstruction approval by the Department, the Department is the reviewing authority. For those projects allowing for preconstruction approval by others, pursuant to Subsection 504.03.b. of these rules, the qualified Idaho licensed professional engineer is also the reviewing authority. (3-30-07)

~~8396~~. Sampling Point. The location in a public water system from which a sample is drawn. (12-10-92)

~~8497~~. Sanitary Defects. Any faulty structural condition which may allow the water supply to become contaminated. (12-10-92)

~~8598~~. Sanitary Survey. An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: (4-5-00)

- a. Source; (4-5-00)
- b. Treatment; (4-5-00)
- c. Distribution system; (4-5-00)
- d. Finished water storage; (4-5-00)
- e. Pumps, pump facilities, and controls; (4-5-00)
- f. Monitoring and reporting and data verification; (4-5-00)
- g. System management and operation; and (4-5-00)
- h. Operator compliance with state requirements. (4-5-00)

~~8699~~. SDWIS-State. An acronym that stands for “Safe Drinking Water Information System-State Version.” It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. See also the definition of DWIMS. (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

87100. Sewage. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (3-30-07)

88101. Significant Deficiency. As identified during a sanitary survey, any defect in a system's design, operation, maintenance, or administration, as well as any failure or malfunction of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. (5-3-03)

89102. Special Irrigation District. An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act. (4-6-05)

9103. Spring. A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. (12-10-92)

9104. Substitute Responsible Charge Operator. An operator of a public drinking water system who holds a valid license at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-6-05)

92105. Surface Water System. A public water system which is supplied by one (1) or more surface water sources or groundwater sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. (4-5-00)

93106. SUVA (Specific Ultraviolet Absorption). SUVA means Specific Ultraviolet Absorption at two hundred fifty-four (254) nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wave length of two hundred fifty-four (254) nm (UV254) (in m=1) by its concentration of dissolved organic carbon (DOC) (in mg/l). (3-30-07)

94107. Total Organic Carbon (TOC). Total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. (4-5-00)

108. Total Trihalomethanes (TTHM). The sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two (2) significant figures. ()

95109. Transient Noncommunity Public Water System. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

per year. (3-30-07)

96110. Treatment Facility. Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. (4-5-00)

97111. Turbidity. A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (12-10-92)

112. Two-Stage Lime Softening. A process in which chemical addition and hardness precipitation occur in each of two (2) distinct unit clarification processes in series prior to filtration. ()

98113. Uncovered Finished Water Storage Facility. ~~An uncovered~~ tank, reservoir, or other facility that is directly open to the atmosphere and used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection. (5-3-03)()

99114. Unregulated Contaminant. Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. (12-10-92)

10015. Variance. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the deferment does not cause an unreasonable risk to public health. (12-10-92)

1016. Very Small Public Drinking Water System. A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). (4-5-00)

10217. Volatile Organic Chemicals (VOCs). VOCs are lightweight organic compounds that vaporize or evaporate easily. (10-1-93)

10318. Vulnerability Assessment. A determination of the risk of future contamination of a public drinking water supply. (12-10-92)

10419. Waiver. (12-10-92)

a. For the purposes of these rules, except Sections 500 through 552, "waiver" means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. (3-30-07)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

b. For purposes of Sections 500 through 552, “waiver” means a dismissal of any requirement of compliance. (3-30-07)

c. For the purposes of Section 010, “waiver” means the deferral of a fee assessment for a public drinking water system. (10-1-93)

10520. Wastewater. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (3-30-07)

10621. Water for Human Consumption. Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms. (5-3-03)

10722. Water Main. A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections. The collection of water mains within a given water supply is called the distribution system. (5-3-03)

10823. Water Main Extension. As used in Subsection 504.03, an extension of the distribution system of an existing public water system that does not require a booster pumping station and is intended to increase the service area of the water system. (3-30-07)

10924. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-30-07)

125. Wholesale System. A public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. MAXIMUM CONTAMINANT LEVELS AND MAXIMUM RESIDUAL DISINFECTANT LEVELS.

01. Inorganic Contaminants. (10-1-93)

a. 40 CFR 141.11, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

b. 40 CFR 141.62, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)

c. The maximum contaminant level for cyanide is two-tenths milligram per liter (0.2

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

mg/l). (12-10-92)

02. Organic Contaminants. (~~10-1-93~~)

~~a.~~ ~~40 CFR 141.12, revised as of July 1, 2002, is herein incorporated by reference.~~
(~~5-3-03~~)

~~b.~~ 40 CFR 141.61 is herein incorporated by reference. except that the best available technology (BAT) treatment listed in 40 CFR 141.61(b) shall be changed to reflect that packed tower aeration will not be listed for toxaphene but will be listed for toluene. (~~10-1-93~~)()

03. Turbidity. 40 CFR 141.13 is herein incorporated by reference. (10-1-93)

04. Radionuclides. 40 CFR 141.66, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

05. Microbiological Contaminants. 40 CFR 141.63, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

06. Maximum Contaminant Levels for Disinfection Byproducts. 40 CFR 141.64, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

07. Maximum Residual Disinfectant Levels. 40 CFR 141.65, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

08. Effective Dates. 40 CFR Part 141, revised as of July 1, 2004, is herein incorporated by reference. Effective date information provided in 40 CFR 141.6 and 40 CFR 141.60 is applicable. (4-6-05)

051. -- 099. (RESERVED).

100. MONITORING AND ANALYTICAL REQUIREMENTS.

01. Microbiological Contaminant Sampling and Analytical Requirements.
(10-1-93)

a. 40 CFR 141.21, revised as of July 1, 2001, is herein incorporated by reference.
(3-15-02)

b. The Department may reduce the total coliform monitoring frequency for community water systems serving twenty-five (25) to one thousand (1000) persons, as specified in 40 CFR 141.21(a)(2) and Subsection 100.01. The Department may allow community water systems serving twenty-five (25) to one thousand (1000) persons to reduce the total coliform monitoring frequency to once per quarter when; (12-10-92)

i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

**Docket No. 58-0108-0701
PENDING RULE**

ii. There has been no history of total coliform contamination in its current configuration; and (10-1-93)

iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)

iv. A sanitary survey has been conducted within the past five (5) years which indicates to the Department that there are no deficiencies which could affect microbial quality; and (12-10-92)

v. The system uses only a groundwater source that is protected. (12-10-92)

c. The Department may reduce the total coliform monitoring frequency for noncommunity water systems serving less than one thousand (1000) persons as specified in 40 CFR 141.21(a)(3)(i) and Subsection 100.01. The Department may allow noncommunity water systems serving less than one thousand (1000) persons to reduce the total coliform monitoring frequency to once per year when; (12-10-92)

i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)

ii. No coliforms have been detected in the last three (3) years of monitoring; and (12-10-92)

iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)

iv. A sanitary survey has been conducted within the past five (5) years which indicates to the Department that there are no deficiencies which could affect microbial quality; and (12-10-92)

v. The system uses only a groundwater source that is protected. (12-10-92)

d. The Department may reduce the total coliform monitoring frequency for noncommunity water systems serving more than one thousand (1000) persons during any month the system serves one thousand (1000) persons or fewer as specified in 40 CFR 141.21(a)(3)(ii) and Subsection 100.01. The Department will allow noncommunity water systems serving more than one thousand (1000) persons to reduce the total coliform monitoring frequency for any month the system serves one thousand (1000) persons or fewer, down to a minimum of one (1) sample per year, provided; (10-1-93)

i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)

ii. No coliforms have been detected in the last three (3) years of monitoring; and (12-10-92)

iii. The system has been in compliance with the total coliform monitoring

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

requirements for the last three (3) years; and (12-10-92)

iv. A sanitary survey has been conducted within the past five (5) years which indicates that there are no deficiencies which could effect microbial quality; and (12-10-92)

v. The system uses only a groundwater source that is protected. (12-10-92)

e. A system must collect repeat samples within twenty-four (24) hours of notification of positive results as specified in 40 CFR 141.21(b) and Subsection 100.01. The Department may allow a system to delay collection of repeat samples if the system; (12-10-92)

i. Identifies the cause of the contamination; (12-10-92)

ii. Is making progress towards correcting the problem; (12-10-92)

iii. Submits a written request to delay collecting repeat samples and a written statement admitting an acute MCL violation; (12-10-92)

iv. Follows public notification requirements specified under 40 CFR Part 141.32, Subpart Q, revised as of July 1, 2004~~6~~, for ~~acute~~ Tier 1 MCL violations including notice for consumers to boil their water; ~~(3-15-02)~~(____)

v. Continues to collect the regularly scheduled number of routine samples; (12-10-92)

vi. Collects all repeat samples immediately following correction of the problem; and (12-10-92)

vii. Collects five (5) routine samples during the month following the end of the violation as required under 40 CFR 141.21 (b)(5), unless waived as allowed under that paragraph. (12-10-92)

02. Turbidity Sampling and Analytical Requirements. 40 CFR 141.22, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

03. Inorganic Chemical Sampling and Analytical Requirements. 40 CFR 141.23, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)

04. Organic Chemicals Other Than Total Trihalometranes, Sampling and Analytical Requirements. 40 CFR 141.24, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)

05. Analytical Methods for Radioactivity. 40 CFR 141.25, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

06. Monitoring Frequency and Compliance Requirements for Radioactivity in Community Water Systems. 40CFR 141.26, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

**Docket No. 58-0108-0701
PENDING RULE**

07. Waivers and Vulnerability Assessments. (10-1-93)

a. Waivers from sampling requirements in Subsections 100.03, 100.04, 200.01, 551.01.h. and 551.01.i. may be available to all systems for all contaminants except nitrate, nitrite, arsenic and trihalomethanes, and are based upon a vulnerability assessment, use assessment and/or the analytical results of previous sampling. (10-1-93)

b. There are two (2) general types of monitoring waivers: (12-10-92)

i. Waivers based exclusively upon previous analytical data (12-10-92)

ii. Waivers based on a use or vulnerability assessment. (12-10-92)

c. Waivers are to be made by the Department on a contaminant specific basis and must be in writing. (12-10-92)

d. Vulnerability assessments may be conducted by the Department, the water system, or a third party organization. The Department shall approve or disapprove all vulnerability assessments in writing. (12-10-92)

e. Water systems which do not receive waivers shall sample at the required initial and repeat monitoring frequencies. (12-10-92)

f. If a system elects to request a waiver from monitoring, it shall do so in writing at least sixty (60) days prior to the required monitoring deadline date. (10-1-93)

08. Initial Monitoring Schedule. In addition to the requirements specified in 40 CFR 141.23, revised as of July 1, 2004, 40 CFR 141.24, revised as of July 1, 2004, and 40 CFR 141.40, revised as of July 1, 2001, initial monitoring must be completed according to the following schedule unless otherwise specified by the Department: (4-6-05)

a. Public water systems serving more than one hundred (100) people must conduct initial monitoring before January 1, 1995 except that: (10-1-93)

i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving any public water system. (10-1-93)

ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

b. Public water systems serving one hundred (100) or less people must conduct initial

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

monitoring before January 1, 1996 except that: (10-1-93)

i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving a public water system. (10-1-93)

ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

09. Alternate Analytical Techniques. 40 CFR 141.27 is herein incorporated by reference. (10-1-93)

10. Approved Laboratories. All analyses conducted pursuant to this chapter, except those listed below, shall be performed in laboratories certified or granted reciprocity by the Department. The following analyses shall be conducted by the public water system in accordance with the procedures approved in Idaho Department of Health and Welfare Rules, IDAPA 16.02.13, Subsection 008.02, "Rules Governing Certification of Idaho Water Quality Laboratories." (10-1-93)

a. pH; (12-10-92)

b. Turbidity (Nephelometric method only); (12-10-92)

c. Daily analysis for fluoride; (12-10-92)

d. Temperature; and (12-10-92)

e. Disinfectant residuals, except ozone, which shall be analyzed using the Indigo Method or an acceptable automated method pursuant to Subsection 300.05.c. (12-10-92)

11. Consecutive Water System. 40 CFR 141.29 is herein incorporated by reference. (10-1-93)

~~**12. Total Trihalomethane Sampling, Analytical and Other Requirements.** 40 CFR 141.30, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)~~

101. -- 149. (RESERVED).

150. REPORTING, PUBLIC NOTIFICATION, RECORDKEEPING.

01. Reporting Requirements. 40 CFR 141.31, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

02. Public Notification. 40 CFR Part 141, Subpart Q, revised as of July 1, 2003~~6~~, is herein incorporated by reference. (~~3-20-04~~)()

03. Record Maintenance. 40 CFR 141.33, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

04. Unregulated Contaminant Reporting and Public Notification. 40 CFR 141.35, revised as of July 1, 2003, is herein incorporated by reference. (3-20-04)

05. Reporting and Record Keeping for the Interim Enhanced Surface Water Treatment Rule. 40 CFR 141.175, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

06. Reporting and Record Keeping Requirements for the Disinfectants and Disinfectant Byproducts Rule. 40 CFR 141.134, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

151. CONSUMER CONFIDENCE REPORTS.

40 CFR Part 141, Subpart O, revised as of July 1, 2003~~6~~, is herein incorporated by reference. (~~3-20-04~~)()

(BREAK IN CONTINUITY OF SECTIONS)

250. MAXIMUM CONTAMINANT LEVEL GOALS AND MAXIMUM RESIDUAL DISINFECTION LEVEL GOALS.

01. Organic Contaminants. 40 CFR 141.50 is herein incorporated by reference. (10-1-93)

02. Inorganic Contaminants. 40 CFR 141.51, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)

03. Microbiological Contaminants. 40 CFR 141.52, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

04. Maximum Contaminant Level Goals for Disinfection Byproducts. 40 CFR 141.53, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

05. Maximum Residual Disinfectant Level Goals for Disinfectants. 40 CFR 141.54, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

06. Radionuclides. 40 CFR 141.55, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

311. ENHANCED FILTRATION AND DISINFECTION FOR CRYPTOSPORIDIUM -- LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE.

40 CFR Part 141, subpart W, revised as of July 1, 2006, is herein incorporated by reference.

()

01. Cryptosporidium Treatment Credit for Approved Watershed Control Program. The Department shall award 0.5 (zero point five) logs cryptosporidium removal credit to systems that have a Department approved Watershed Control Program. Requirements for a watershed control program are set forth in 40 CFR 141, Subpart W. Guidance on how to develop a watershed control program and obtain Department approval is provided in "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002.

()

02. Assessment of Significant Changes in the Watershed. As part of the sanitary survey process set forth in Section 302, the Department, or an agent approved by the Department, shall assess significant changes in the watershed of a surface water system that have occurred since the system conducted source water monitoring. If changes in the watershed have the potential to significantly increase contamination of the source water with cryptosporidium, the Department shall consult with the water system owner on follow-up actions that may be required under 40 CFR 141, Subpart W, including, but not limited to, source water monitoring and/or additional treatment requirements. "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002, provides a description of factors that will be considered by the Department when making an assessment of changes in the watershed. These factors include, but are not limited to the following:

()

a. New NPDES permits or changes in existing NPDES permits that involve increased loading of contaminants.

()

b. Changes in land use patterns.

()

c. Changes in agricultural cropping, chemical application, or irrigation practices.

()

d. Changes in other non-point discharge source activities (such as grazing, manure application, commercial or residential development).

()

e. Stream or riverbed modifications.

()

f. NPDES permit violations at wastewater treatment plants and confined animal feedlot operations.

()

g. Dramatic natural events such as floods, forest fires, earthquakes, and landslides that may transport or expose contaminants.

()

h. Prolonged drought conditions that may warrant special preparatory measures to

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Public Drinking Water Systems

Docket No. 58-0108-0701
PENDING RULE

minimize impacts from waste accumulations that are washed into source waters when precipitation returns. ()

i. Status of the water system's emergency response plan. ()

i. Accidental or illegal waste discharges and spills. ()

~~3142.~~ -- 319. (RESERVED).

320. DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS, AND DISINFECTION BYPRODUCT PRECURSORS.

This Section incorporates 40 CFR Part 141, Subpart L, of the National Primary Drinking Water Regulations, known as the Disinfectants and Disinfection Byproducts Rule. (4-5-00)

01. General Requirements. 40 CFR 141.130, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

02. Analytical Requirements. 40 CFR 141.131, revised as of July 1, 2002~~6~~, is herein incorporated by reference. DPD colorimetric test kits may be used to measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide. (~~5-3-03~~)()

03. Monitoring Requirements. 40 CFR 141.132, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

04. Compliance Requirements. 40 CFR 141.133, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

05. Treatment Techniques for Control of Disinfection Byproduct (DBP) Precursors. 40 CFR 141.135, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

321. INITIAL DISTRIBUTION SYSTEM EVALUATIONS.

40 CFR Part 141, Subpart U, revised as of July 1, 2006, is herein incorporated by reference. "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR 141, Subpart U. ()

322. STAGE 2 DISINFECTION BYPRODUCTS REQUIREMENTS.

40 CFR Part 141, Subpart V, revised as of July 1, 2006, is herein incorporated by reference. "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR Part 141, Subpart V. ()

~~3243.~~ -- 349. (RESERVED).

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Section 39-4405, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 182 through 185. The agency received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/haz_waste/58_0110_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive at Section 39-4405, Idaho Code, and 2001 Idaho Session Laws Chapter 297, Section 1 (H.B. 192, as amended).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact John Brueck at john.brueck@deq.idaho.gov, (208) 373-0458.

Dated this 11th day of October, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
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Boise, Idaho 83706-1255
(208)373-0418
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ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Section 39-4405, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ has initiated this rulemaking in response to a Petition for Rulemaking filed by US Ecology Idaho, Inc. In its petition, US Ecology Idaho requested that the Board of Environmental Quality direct DEQ to initiate rulemaking to further limit the types of radioactive materials that are eligible for unrestricted disposal in Idaho by adding a new category of radioactive materials that must be disposed of at a permitted hazardous waste disposal facility. This proposed rule includes the addition of a new category to the definition of Radioactive Material, Subsection 010.10. In addition, the website address for the U.S. Government Printing Office has been added to Subsection 004.03 for availability of federal regulations incorporated by reference. The following groups may be interested in commenting on this proposed rule: Private industry; environmental groups; hazardous and nonhazardous waste disposal facilities; members of the public; and generators of radioactive materials specifically exempted, on a case-by-case basis, from U.S. Nuclear Regulatory Commission regulations contained in 10 CFR 30.11, 10 CFR 40.14, and 10 CFR 70.17.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does regulate an activity regulated by the federal government but is consistent with the legislative directive at Section 39-4405, Idaho Code, and 2001 Idaho Sess. Laws Chapter 297 (H.B. 192).

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701
PENDING RULE

Section 67-5220 and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 63, and a preliminary draft rule was made available for public review. One meeting was held on May 22, 2007. Several members of the public attended the meeting and submitted written comments which resulted in revisions to the preliminary draft rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 29, 2007.

DATED this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-15-02)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-15-02)

- a.** 10 CFR 30.14 through 30.16, revised as of July 1, 2001. (3-15-02)
- b.** 10 CFR 30.18 through 30.21, revised as of July 1, 2001. (3-15-02)
- c.** 10 CFR 32.11, revised as of July 1, 2001. (3-15-02)
- d.** 10 CFR 32.18, revised as of July 1, 2001. (3-15-02)
- e.** 10 CFR 40.13, revised as of July 1, 2001. (3-15-02)

03. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a.** Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701

PENDING RULE

(3-15-02)

b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)

c. U.S. Government Printing Office, ~~Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174~~ <http://www.gpoaccess.gov/index.html>. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Accelerator-Produced Radioactive Material.** Any material made radioactive by exposing it to the radiation from a particle accelerator. (3-15-02)

02. **Board.** The Idaho Board of Environmental Quality. (3-15-02)

03. **Byproduct Material.** Byproduct Material means: (3-15-02)

a. Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)

b. The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)

04. **Department.** The Idaho Department of Environmental Quality. (3-15-02)

05. **Exempt Quantities and Concentrations of Byproduct Materials.** Radioactive materials defined as byproduct by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.16, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18) in which the quantity and concentration of radionuclides are considered exempt from regulation. (3-15-02)

06. **Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)

07. **Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

08. **Owner.** Any person(s) who currently owns, or owned at the time of disposal, a

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701

PENDING RULE

hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

09. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (3-15-02)

10. Radioactive Material. Radioactive Material includes: (3-15-02)

a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)

b. Accelerator Produced Radioactive Material; (3-15-02)

c. Exempt Quantities and Concentrations of Byproduct Materials; ~~and~~ (3-15-02)(____)

d. Unimportant Quantities of Source Material; and (3-15-02)(____)

e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been declared exempt from regulation under the Atomic Energy Act of 1954, as amended, for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17. (____)

11. Reasonably Maximally Exposed Individual. That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)

12. Source Material. Source material means: (3-15-02)

a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)

b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)

i. Uranium; (3-15-02)

ii. Thorium; or (3-15-02)

iii. Any combination thereof. (3-15-02)

c. Source material does not include special nuclear material. (3-15-02)

13. Special Nuclear Material. Special Nuclear Material means: (3-15-02)

a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0110-0701

Disposal of Radioactive Materials Not Regulated by Act of 1954

PENDING RULE

235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)

b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)

14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM). Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)

15. Unimportant Quantities of Source Material. Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 186 through 202.

The agency received no public comments; however, the proposed rule has been revised at Sections 004, 005, 010, 020, 030, 040, 041, 042, and 050 for consistency and clarification. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/drinking_water_loans/58_0120_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The fiscal impact is indeterminate but should not be material to the fund. The EPA's Drinking Water State Revolving Fund (DWSRF) rules limit a state's ability in making disadvantaged loans: "A State may take an amount equal to no more than 30% of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities." (40 CFR 35.3525.b.2)

If DEQ receives a \$5 million capitalization grant and loaned the maximum amount possible to disadvantaged communities (assuming a 0% loan interest rate instead of a 3% interest rate), the income loss would be \$45,000 per year (declining thereafter as loans are repaid). However, with the likely continuation of the DWSRF funding by Congress, additional capitalization will more than offset any forgone income.

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Dated this 11th day of October, 2007.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program**

**Docket No. 58-0120-0701
PENDING RULE**

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
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(208)373-0418 / Fax No. (208)373-0481
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise the conditions and qualifications for disadvantaged loans set out in IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program. An analysis of the drinking water loans made to date illustrates that the qualification for a disadvantaged loan may be too restrictive (the program has been in place for 9 years and only 2 disadvantaged loans have been entered into: Salmon and Castleford). The combination of how communities prove their median household income and the disadvantaged loan qualifications combine to provide difficult challenges for some communities. This rulemaking will include the following proposed revisions:

1. Remove one of the conditions for a disadvantaged loan (median household income does not exceed 80% of the statewide nonmetropolitan median household income) and change the second condition (reducing the percentage required for user fees from 2% to 1½%). The remaining disadvantaged loan qualification condition would then be that user fees would exceed 1½% of median household income.
2. Allow drinking water systems to make use of approved third party income surveys to verify the community's median household income. Currently communities must use census data, but most communities are not reported at the census level (out of 756 community water systems only 143 are cities).

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program**

**Docket No. 58-0120-0701
PENDING RULE**

These revisions include the removal of obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Citizens in economically disadvantaged communities, and cities, counties, districts and associations that own and operate public drinking water systems may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 65, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

004. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Loan Program. The Drinking Water Loan Program provides assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public water system with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of these rules and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (5-3-03)()

005. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (5-3-03)()

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

006. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ()

0067. SYSTEM ELIGIBILITY.

01. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

02. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project loans: (3-23-98)

a. Systems that do not have the technical, managerial, and financial capability to ensure compliance with the requirements of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

b. Systems in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

c. Systems under disapproval designation as outlined in the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08); (3-23-98)

d. Systems under current drinking water enforcement action by the Department; or

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

(3-23-98)

- e. Systems delinquent in payment of the annual state drinking water fee assessment. (3-23-98)

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans as described in Subsections 006.02.a. through 006.02.d. may receive assistance if: (5-3-03)

- a. The use of the assistance will ensure compliance; (3-23-98)
- b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); (3-23-98)
- c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and (3-23-98)
- d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) ~~or variance~~, the Department conducts a review to determine whether this section applies to the system. ~~(3-23-98)~~()

~~0078.~~ -- 009. (RESERVED).

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-23-98)

- 01. **Applicant.** Any qualifying entity making application for Drinking Water loan funds. (5-3-03)
- 02. **Board.** The Idaho ~~State~~ Board of Environmental Quality. ~~(3-23-98)~~()
- 03. **Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. ~~(5-3-03)~~()
- 04. **Community Water System.** A public drinking water system that: (5-3-03)
 - a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-23-98)
 - b. Regularly serves at least twenty-five (25) year-round residents. (3-23-98)
- 05. **Construction.** The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public drinking water system facilities, including preliminary

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

planning to determine the economic and engineering feasibility of public drinking water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of public water system facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)

06. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (5-3-03)

07. Department. The Idaho Department of Environmental Quality. (3-23-98)

08. Director. The Director of the Idaho Department of Environmental Quality or ~~his~~ her the Director's designee. (3-23-98)()

09. Disadvantaged Community. The service area of a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-23-98)

10. Disadvantaged Loans. Loans made to a disadvantaged community. (3-23-98)

11. Distribution System. Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (5-3-03)

142. Eligible Costs. Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

153. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

164. Engineering Report. ~~A report which compares public water system facility alternatives and identifies the most cost effective, environmentally sound alternative. A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook.~~ (3-23-98)()

135. Environmental Impact Statement (EIS). A document prepared by the ~~grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook~~ applicant when the Department determines that the proposed drinking water construction project will significantly affect the environment ~~as described in Appendix C of the Handbook~~. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing an EIS. (5-3-03)()

126. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)()

17. Facility Plan. A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. ()

178. Financial Management System. Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)

189. Finding Of No Significant Impact (FQNSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)()

~~1920.~~ **Handbook.** "Drinking Water Loan Handbook of Procedures." (5-3-03)

~~201.~~ **Ineligible Costs.** Costs which are described in Subsection 041.05. (5-3-03)

~~212.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (5-3-03)

~~223.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (5-3-03)

~~23. Municipality.~~ Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (5-3-03)

24. Noncommunity Water System. A public water system that is not a community water system. (3-23-98)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

25. Nonprofit Noncommunity Water System. A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools. (3-23-98)

26. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (3-23-98)

27. O & M Manual. Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (3-23-98)

28. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-23-98)

29. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up, and operation of the public water system facility. (5-3-03)

30. Priority List. A list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (5-3-03)

31. Public Drinking Water Systems/Public Water System/Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." (5-3-03)()

~~a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty five (25) individuals daily at least sixty (60) days out of the year. Such term includes:~~ (5-3-03)

~~i. Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems; and~~ (5-3-03)

~~ii. Any collection or pretreatment storage facilities not under such control which are~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

~~used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system."~~ (5-3-03)

~~b. Connections. For purposes of paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:~~ (5-3-03)

~~i. The water is used exclusively for purposes other than residential uses (consisting of drinking, cooking, and bathing, or other similar uses);~~ (3-23-98)

~~ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or~~ (5-3-03)

~~iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.~~ (5-3-03)

~~e. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection.~~ (5-3-03)

32. Qualifying Entity. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public water system or irrigation system and which establishes and maintains a dedicated loan repayment source. (3-23-98)()

33. Rehabilitation. The repair or replacement of segments of drinking water facilities. (5-3-03)

34. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (5-3-03)

35. State. The State of Idaho. (3-23-98)

36. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (3-23-98)

37. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-23-98)

38. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules. (5-3-03)

39. Termination. An action by the Director to permanently terminate a loan contract

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

prior to project completion for a specific cause. Terminated contracts shall not be reinstated.

(3-23-98)

40. Unreasonable Risks to Health (URTH). Refers to a level of contamination that presents an “unreasonable risk to health” and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency.

(5-3-03)

41. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system ~~facility~~.

~~(3-23-98)~~(____)

42. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources (and in all ways protects the water system from injection of contaminants), and which provides for fees for service from users or classes of users.

(3-23-98)

43. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants.

(5-3-03)

011. FINANCIAL TECHNICAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for the construction of projects unless the applicant has demonstrated and certified that it has the legal, technical, institutional, managerial, and financial capabilities to ensure construction, operation and maintenance (including equipment replacement of the proposed public water system facility), and to repay principal and interest which would be due on a loan from the state revolving loan fund.

(3-23-98)

01. Information Needed. Before an application shall be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project.

(3-23-98)

02. Incorporated Nonprofit Applicants.

(3-23-98)

a. In addition to all other information required to be submitted by these rules and regulations, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that:

(3-23-98)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 03, Title 30, Idaho Code;

(3-23-98)

ii. The corporation is authorized to incur indebtedness to construct, improve, or repair public water systems facilities;

(3-23-98)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; (3-23-98)

iv. The corporation exists either perpetually or for a period long enough to repay a public water system facility loan; and (3-23-98)

v. The corporation is capable of raising revenues by fixing and collecting user charges. (3-23-98)

b. The Department may impose conditions on the making of a public water system facility loan to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and regulations and the provisions of Chapter 76, Title 39, Idaho Code. (3-23-98)

03. Cost Allocation. An applicant proposing to construct public water system facilities designed to serve two (2) or more qualifying entities must show how the costs shall be allocated among the participating entities. Such applicants must provide an executed inter-~~municipal~~ organizational service agreement which, at a minimum, incorporates the following information: (~~3-23-98~~)()

a. The basis upon which the costs are allocated; (3-23-98)

b. The formula by which the costs are allocated; and (3-23-98)

c. The manner in which the cost allocation system shall be implemented. (3-23-98)

04. Waivers. The requirement in Subsection 011.03 may be waived by the Department if the applicant can demonstrate: (3-23-98)

a. Such an agreement is already in place; (3-23-98)

b. There is documentation of a service relationship in the absence of a formal agreement; or (3-23-98)

c. The entity providing public drinking water exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying drinking water fails to participate. (3-23-98)

012. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ Loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health criteria, water quality criteria, and condition of the existing system. (~~5-3-03~~)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the Drinking

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

Water Loan Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (3-23-98)

a. Public Health Emergency. Shall be ~~certified~~ by the ~~Department~~ Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, contamination levels at or above Unreasonable Risks to Health (URTH), or a failed water source. (100 points) (~~5-3-03~~)()

b. Public Health Hazard. Identified and ~~verified~~ documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) (~~3-23-98~~)()

c. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (3-23-98)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, and delivering drinking water. (61 points) (3-23-98)

e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (3-23-98)

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order. (30 points) (3-23-98)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring. (16 points) (3-23-98)

h. Affordability. Points shall be given when proposed system user charges exceed state affordability guidelines. (10 points) (3-23-98)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-23-98)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for, or scope of any project, a reevaluation of that priority rating shall be conducted. (3-23-98)

05. Priority Target Date. A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Department and a target date for submission of a completed loan application shall be established. (3-23-98)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

06. Project Bypass. A project that does not or shall not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project or projects that are ready to proceed. A project that is bypassed shall be notified in writing of the reasons for being bypassed. (3-23-98)

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-23-98)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have ~~a median household income that does not exceed eighty percent (80%) of the statewide non-metropolitan median household income from the most recent census data, and~~ an annual cost of drinking water service for residential customers which exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income. (~~3-23-98~~)()

a. The annual cost includes all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) being financed with state revolving funds. If the applicant's service area is not within the boundaries of a municipality, ~~or if the applicant's service area's median household income is not consistent with the municipality as a whole,~~ the applicant may use the census data for the county in which it is located ~~or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area.~~ (~~3-23-98~~)()

b. For disadvantaged applicants for which the annual cost exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income, those applicants must agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (~~5-3-03~~)()

02. Adjustment of Loan Terms. Loan terms may be adjusted in the following sequence: (5-3-03)

a. First, the length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual cost equals ~~two percent~~ one and one-half percent (21½%) of median household income. (~~3-23-98~~)()

b. If at a thirty (30) year repayment, the annual cost still exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income, the loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual charge equal to ~~two percent~~ one and one-half percent (21½%) of median household income. (~~3-23-98~~)()

c. The interest rate may be reduced to as low as zero percent (0%). If even at zero percent (0%) interest and a thirty (30) year repayment, the annual charge per residential user still exceeds ~~two percent~~ one and one-half percent (21½%) of median household income, the principal which causes the user charge to exceed ~~two percent~~ one and one-half percent (21½%) may be reduced except the principal reduction cannot exceed an amount greater than fifty percent (50%) of the total ~~project cost~~ loan. (~~5-3-03~~)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

Loan funds awarded under this program may be used to prepare an engineering report or a facility plan which identifies the ~~most~~ cost effective, *and* environmentally sound drinking water system alternative to achieve or maintain compliance with ~~the Idaho Rules for Public Drinking Water Systems~~, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative.

(~~5-3-03~~)(____)

01. Project Step Funding. Projects may be funded in steps: (3-23-98)

a. Step 1. Engineering report or facility plan prepared by an Idaho licensed professional engineer ~~licensed in the state of Idaho~~ who carries professional liability insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department;

(~~5-3-03~~)(____)

b. Step 2. Design, which includes the preparation by an Idaho licensed professional engineer ~~licensed in the state of Idaho~~ of the detailed engineering plans and specifications necessary for the bidding and construction of the project;

(~~3-23-98~~)(____)

c. Step 3. Construction, which includes bidding and actual construction of the project; or (3-23-98)

d. Step 4. A combination of Step 2 and Step 3. (3-23-98)

02. Combination Step Funding. Projects may be funded in any combination of the steps with approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans shall be amortized and a repayment schedule prepared by the Department. (3-23-98)

03. ~~Cost Effective~~ Requirements for Awarding a Loan. Step 2, Step 3, or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 engineering report ~~as~~ or facility plan and approved by the Department. ~~The cost effective alternative may be selected based on the comments received from at least one (1) public hearing attended by affected users~~ If the engineering report or facility plan has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," at least one (1) public hearing must be held so that the affected users can submit comments before accepting the cost effective and environmentally sound selected alternative. The public hearing will be held within the jurisdiction of the qualifying entity and conducted in accordance with state law. (~~3-23-98~~)(____)

04. Funding for Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth except that distribution and

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

transmission lines which may be planned for a forty (40) year useful life. (5-3-03)

031. LIMITATION OF PRE-LOAN ENGINEERING REVIEWS.

Department ~~of Environmental Quality~~ staff may review engineering or facility planning documents for any drinking water system. However, in order for the costs of preparation of pre-loan engineering documents to be loan eligible, the consulting engineer must submit a certificate of professional liability indemnification in accordance with Subsection 050.05.d. ~~(3-23-98)~~(____)

032. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (5-23-98)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; and (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; and (5-3-03)

e. A demonstration that the obligation to pay the costs for which funding is requested

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~(____)

f. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (3-23-98)

g. Step 1~~2~~: Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the engineering report or facility plan, a schedule for completion of the work tasks, and an estimate of man hours and costs to complete the work tasks. ~~(3-23-98)~~(____)

h. Step 2~~2~~: Design. ~~(3-23-98)~~(____)

i. Engineering report or facility plan including a final environmental document and decision in accordance with Section 042; ~~(5-3-03)~~(____)

ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)

iii. Inter-~~municipal~~ organizational service agreements between all qualifying entities within the scope of the project, if applicable; and ~~(3-23-98)~~(____)

i. Step 3~~2~~: Construction. ~~(3-23-98)~~(____)

i. Documented evidence of all necessary easements and land acquisition. (5-3-03)

ii. Biddable plans and specifications of the approved public water system facility alternative; (3-23-98)

iii. A plan of operation and project schedule; (3-23-98)

iv. A user charge system, water use system protection ordinance, and financial management system; and (3-23-98)

v. A staffing plan and budget. (3-23-98)

j. Step 4~~2~~: Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. ~~(3-23-98)~~(____)

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation shall be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

05. Reapplication for Loan. The action of disapproving, recalling, or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (3-23-98)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

- a. Necessary for planning, designing and/or constructing drinking water systems; (5-3-03)
- b. Reasonable; and (5-3-03)
- c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or ~~preliminary~~ engineering report for design and construction of drinking water systems, and any other relevant information in the application that describes the scope of the project to be funded. ~~(5-3-03)~~(____)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~(____)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable, and not ineligible costs include: (5-3-03)

- a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses ~~of local government~~ such as salaries and expenses of a mayor, city council members, board; or ~~a~~ city, district, or board attorney; ~~(5-3-03)~~(____)
- b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)
- c. Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)
- d. Engineering directly related to the public water system facilities; (5-3-03)
- e. Financial and management capability analysis if it ensures compliance; (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

- f.** Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)
 - g.** Landscaping; (5-3-03)
 - h.** Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)
 - i.** Material acquired, consumed, or expended specifically for the project; (5-3-03)
 - j.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)
 - k.** Preparation of an operation and maintenance manual; (5-3-03)
 - l.** Preparation of a plan of operation; (5-3-03)
 - m.** Start-up services; (5-3-03)
 - n.** Project identification signs; (5-3-03)
 - o.** Public participation for alternative selection; (5-3-03)
 - p.** Development of user charge and financial management systems; (5-3-03)
 - q.** Development of water system protection and backflow prevention ordinance or rule; (5-3-03)
 - r.** Initial staffing plans and budget development; (5-3-03)
 - s.** Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
 - t.** Site acquisition costs, including right of way and the site for public water system; and (5-3-03)
 - u.** Certain direct and other costs as determined eligible by the Department. (5-3-03)
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a.** Basin or area wide planning not directly related to the project; (5-3-03)
 - b.** Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c.** Personal injury compensation or damages arising out of the project; (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

- d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- e. Costs outside the scope of the approved project; (5-3-03)
- f. Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; ~~(5-3-03)~~(____)
- g. Cost of land in excess of that needed for the proposed project; (5-3-03)
- h. Cost of condemnations; or (5-3-03)
- i. Engineering costs incurred without professional liability insurance. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant shall complete an environmental review as part of and in conjunction with an engineering report or facility plan. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall consult with the Department at an early stage in the ~~preparation of the engineering report~~ loan process to determine the required level of environmental review. Based on review of existing information, ~~the Department shall assess potential and assessment of environmental impacts, and shall instruct the applicant to either shall~~ complete one (1) of the following per the Department's instruction: ~~(3-23-98)~~(____)

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-23-98)
- b. Prepare an Environmental Information Document (EID) in a format specified by the Department; or (3-23-98)
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-23-98)

02. Categorical Exclusions. ~~At the request of an applicant, the Department shall determine from existing information whether an action is consistent with categories eligible for~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

~~exclusion where upon~~ If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: ()

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of ~~Categorical Exclusion~~ CE from substantive environmental review. Once the ~~Categorical Exclusion~~ CE is granted for the ~~proposed project and~~ selected alternative, the Department will publish a notice of ~~Categorical Exclusion has been published~~ CE in a local newspaper to inform the public of this action, following which the engineering report or facility plan can be approved and the loan award can proceed.

(3-23-98)()

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the applicant to prepare an EID. ()

03. Environmental ~~Review Process~~ Information Document Requirements. ~~When issuance of a Categorical Exclusion is not appropriate, the applicant shall prepare an Environmental Information Document (EID).~~ When an EID is required, the applicant shall prepare the EID ~~in~~ accordance with the following Department procedures: (3-23-98)()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (3-23-98)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (3-23-98)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). (3-23-98)()

04. Final Finding of No Significant Impact. The ~~final~~ Department shall publish the draft FONSI ~~shall be published~~ in a newspaper of general circulation in the geographical area of the proposed project ~~in accordance with state policies on public participation~~ and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment and after any public concerns about project impacts are ~~resolved~~ addressed, the FONSI shall become final ~~and the engineering report can be approved and the loan can be awarded~~. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. (3-23-98)()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: (3-23-98)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (3-23-98)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-23-98)

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and (3-23-98)()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-23-98)

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has Department approval. (5-3-03)

~~**07. Mitigation Measures.** Prior to approval of a facilities plan, the Department must ensure that effective mitigation measures identified in the FNSI and EID shall be implemented by the applicant.~~ (3-23-98)

087. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (3-23-98)

~~**098. Federal Environmental Review**~~ **Use of Environmental Reviews Conducted by Other Agencies.** If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, ~~in~~ at its discretion, issue its own determination by adopting the document and public participation process of the ~~federal~~ other agency. (3-23-98)()

~~**109. Validity of Review.**~~ Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public views and shall: (3-23-98)

a. Reaffirm the earlier decision; or (3-23-98)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-23-98)

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers shall be delivered to successful applicants by representatives of the Department or by registered mail. (3-23-98)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period, the loan funds may be offered to the next project on the priority list. (3-23-98)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or ~~his/her~~ the Director's designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity becomes a loan recipient. The disbursement of funds, pursuant to a loan contract, is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who shall be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (~~3-23-98~~)(____)

04. Estimate of Reasonable Cost. All loan contracts shall include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (3-23-98)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction, and management of the project; (3-23-98)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans, design, and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (~~3-23-98~~)(____)

d. Requirement for the prime engineering firm(s), ~~and their principals~~ retained for engineering services, to carry professional liability insurance to protect the public from negligent acts of the engineer and errors of omission of a professional nature. The total aggregate of the professional liability of the engineer insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the engineer, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases which are state funded; (~~5-3-03~~)(____)

e. The project shall be bid, contracted, and constructed according to the current edition of Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; (5-3-03)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-3-03)

g. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The borrower may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-23-98)

h. Repayment default shall occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted ~~government~~ accounting principles ~~issued by the Government Accounting Standards Board (GASB).~~ (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVERS.

Waiver from the requirements of these rules may be granted by the Department Director or ~~his/her~~ the Director's designee, on a case-by-case basis, upon full demonstration by the loan applicant/recipient requesting the waiver that the following conditions exist. (3-23-98)()

01. **Health Hazard.** A significant public health hazard exists; (3-23-98)

02. **Affordability Criteria Exceeded.** The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (3-23-98)

03. **Availability of Federal Funds.** The waiver shall not affect the availability of federal funds for the project where such funding is required by the entity requesting the waiver. (3-23-98)

~~996. CONFIDENTIALITY.~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ (3-15-02)

997. -- 999. (RESERVED).

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 203 through 217. The proposed rule has been revised at Sections 001, 004, 006, 010, 020, 030, 032, 033, 040, and 050 in response to public comment and for consistency and clarification. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/drinking_water_grants/58_0122_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, this rule does regulate an activity not regulated by the federal government.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Dated this 11th day of October, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities" (Grant Rules), for consistency with the environmental review section (042) of IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program" (Loan Rules). The two sets of rules have different requirements for environmental information document preparation and there is no need for the difference. The current structure of the Grant Rules requires that the grant applicant prepare an environmental information document of a uniform scope, regardless of the need for mitigation. Compliance with the Grant Rules adds a burden to both the applicant and DEQ when a project qualifies for a categorical exclusion. An efficiency would be achieved by adopting the process used for drinking water loans, in which categorical exclusions are specifically allowed with a lower level of effort. Section 042 of the Loan Rules will be used as a model for the environmental review process for grants.

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of references to construction and other obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Cities, counties, districts and associations that own and operate public drinking water systems may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY**Administration of Planning Grants for Public Drinking Water Facilities****Docket No. 58-0122-0701****PENDING RULE**

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 66, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

DATED this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare an engineering report *in conformance with Chapter 5 of the "Drinking Water Facilities Loan Handbook of Procedures" to evaluate feasible treatment, storage and distribution alternatives for public drinking water systems or facility plan.* (5-3-03)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. ~~(3-30-01)~~(____)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (____)

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Grant Program. The Drinking Water Grant Program provides assistance to eligible public drinking water systems for the planning of facilities to help ensure safe and adequate supplies of drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

01. Applicant. Any qualifying entity making application for drinking water planning grant funds. (3-30-01)

02. Board. The Idaho ~~State~~ Board of Environmental Quality. ~~(5-3-03)~~(____)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. ~~(3-30-01)~~(____)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

- 04. Community Water System.** A public drinking water system that: (3-30-01)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-30-01)
- ~~**05. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of a public drinking water system, including preliminary planning to determine the economic and engineering feasibility of a public drinking water system, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of a public drinking water system, the inspection and supervision of the construction and start up of the associated facilities. (5-3-03)~~
- 065. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 076. Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 087. Director.** The Director of the Idaho Department of Environmental Quality or ~~his~~ the Director's designee. (3-30-01)()
- 098. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (3-30-01)
- ~~**10. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed drinking water construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. (3-30-01)~~
- 109. Eligible Costs.** Costs which are necessary for planning public drinking water systems. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (5-3-03)
- 120. Engineering Report.** ~~Report prepared in conformance with Chapter 5 of the Handbook to evaluate feasible treatment, storage, and distribution alternatives for public drinking water systems. A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, and/or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

Handbook.

(3-30-01)()

11. Environmental Impact Statement (EIS). A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. ()

132. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water ~~construction~~ project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-30-01)()

13. Facility Plan. A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. ()

14. Financial Capability. The ability to raise and manage funds to provide the necessary resources for proper operation. (3-30-01)

15. Finding of No Significant Impact (FONSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental ~~assessment~~ information document or a summary of it and shall note any other environmental documents related to it. (3-30-01)()

16. Handbook. "Drinking Water Loan ~~Account~~ Handbook of Procedures." (3-30-01)()

17. Ineligible Costs. Costs which are described in Subsection 032.06. (5-3-03)

18. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

19. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

20. Municipality. ~~Any county, city, special service district, nonprofit corporation or~~

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

~~other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.~~ (3-30-01)

240. Noncommunity Water System. A public water system that is not a community water system. (5-3-03)

221. Nonprofit Noncommunity Water System. A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

232. Nontransient Noncommunity Water System—(NTNCWS). A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (3-30-01)()

243. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

254. Priority List. A list of proposed projects rated ~~according to the priority rating system~~ by severity of a risk to public health, the necessity to ensure compliance with, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., ~~and population affected~~, the need on a household basis ~~and~~ for protection of Idaho’s public drinking water supplies, and as otherwise described in Section 020. (3-30-01)()

265. Public Drinking Water System/Public Water System/Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “noncommunity water system.” (3-30-01)()

~~a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty five (25) individuals daily at least sixty (60) days out of the year. Such term includes:~~ (3-30-01)

~~i. Any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system; and~~ (3-30-01)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

~~ii. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system."~~ (3-30-01)

~~b. Connections. For purposes of paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:~~ (5-3-03)

~~i. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);~~ (3-30-01)

~~ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or~~ (3-30-01)

~~iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.~~ (3-30-01)

~~e. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection.~~ (5-3-03)

276. Qualifying Entity. ~~Community water systems and nonprofit noncommunity water systems. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system or irrigation system.~~ (3-30-01)()

287. Rehabilitation. The repair or replacement of segments of drinking water facilities. (3-30-01)

298. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

3029. State. The state of Idaho. (3-30-01)

340. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

321. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules. (3-30-01)

332. Termination. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

33. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public drinking water system. ()

34. Unreasonable Risk to Health (URTH). Refers to a level of contamination that presents an “unreasonable risk to health” and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)

35. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

011. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria and condition of the existing system. (5-3-03)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance ~~under the Drinking Water Grant Program~~ in accordance with these rules. (5-3-03)()

02. Priority Rating. Priority criteria shall contain the following points: (3-30-01)

a. Public Health Emergency. Shall be ~~certified~~ by the ~~Department~~ Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above Unreasonable Risk to Health (URTH), or a failed water source - one hundred (100) points. (3-30-01)()

b. Public Health Hazard. Identified and ~~verified~~ documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses - nineteen (19) points. (3-30-01)()

c. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents - seventy-one (71) points. (3-30-01)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, storing, and delivering drinking water - sixty-one (61) points. (3-30-01)

e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply - ten (10) points. (3-30-01)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order - thirty (30) points. (3-30-01)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - sixteen (16) points. (3-30-01)

h. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority List. A list shall be developed annually from projects rated according to the priority rating system. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-30-01)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-30-01)

05. Priority Target Date. A qualifying entity whose project is on the ~~adopted~~ approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (~~3-30-01~~)()

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. A qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare an engineering report or facility plan which identifies the ~~most~~ cost effective, and environmentally sound drinking water system alternative to achieve or maintain compliance with ~~the Idaho Rules for Public Drinking Water Systems~~, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C.; Sections 300f et seq., and which is approvable by the Department. (~~3-30-01~~)()

01. Engineering Report or Facility Plan. (~~3-30-01~~)()

a. ~~Step 1.~~ The engineering report ~~will be prepared in accordance with Chapter 5 of the Handbook and~~ or facility plan shall be certified by an registered Idaho licensed professional engineer ~~licensed in the state of Idaho~~. The engineering report ~~will~~ or facility plan shall include, as a minimum, the following: (~~5-3-03~~)()

i. Description of existing conditions for the proposed project area; (3-30-01)

ii. Description of future conditions for the proposed project area; (3-30-01)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

- iii. Development and initial screening of alternatives; (3-30-01)
 - iv. Final screening of principal alternatives and plan adoption; (3-30-01)
 - v. Selected plan description and implementation arrangements; (3-30-01)
 - vi. Relevant engineering data supporting the final alternative; and (3-30-01)
 - vii. ~~Environmental information document (EID)~~ Level of environmental review specified by the Department as described in Section 040. ~~(3-30-01)~~()
- b.** The engineering report or facility plan must be reviewed and approved by the Department. ~~(3-30-01)~~()
- c.** The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. ~~(3-30-01)~~()
- d.** ~~The most cost effective environmentally sound alternative may be selected based in part on public comments received from a~~ At least one (1) public hearing attended by intended users shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project. ~~(3-30-01)~~()

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)

032. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

whether the costs associated with the tasks are eligible costs pursuant to Section 0323; and
(5-3-03)()

c. A plan of study describing the work tasks to be performed in the engineering report or facility plan; and
(5-3-03)()

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum:
(5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and
(5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and
(5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and
(5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and
(5-3-03)

e. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 0323; and
(5-3-03)()

f. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code; and
(5-3-03)()

g. A statement regarding how the non-grant portion of the project will be funded; and
(5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code.
(3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 032.02. (5-3-03)

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

the project deficiencies are resolved and project readiness is secured. (5-3-03)

033. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning drinking water treatment facilities; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 032.06. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for the engineering report or facility plan. ~~(5-3-03)~~()

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses ~~of local government~~ such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; ~~(5-3-03)~~()

b. Professional and consulting services utilizing a lump-sum contract, specifying costs of individual tasks. (5-3-03)

c. Engineering costs pursuant to a lump-sum contract, specifying costs of individual tasks, directly related to the planning of public drinking water treatment, storage and distribution facilities including but not limited to the preparation of an engineering report or facility plan and environmental review report; ~~(5-3-03)~~()

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. Site acquisition services which could include legal fees, appraisals and surveys for

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

land associated with the cost-effective alternative in the report and for land for purchase through future State Revolving Fund loan funding. (5-3-03)

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

- a. Basin or area wide planning not directly related to the project; (5-3-03)
- b. Personal injury compensation or damages arising out of the project; (5-3-03)
- c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- d. Costs outside the scope of the approved project; (5-3-03)
- e. Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, ~~or~~ city attorney, district or association personnel costs, and acquiring project funding; (~~5-3-03~~)()
- f. Preparation of a grant application; (5-3-03)
- g. All costs related to assessment, defense and settlement of disputes; (5-3-03)
- h. Costs of supplying required permits or waivers; (5-3-03)
- i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre- award costs by the Department; (5-3-03)
- j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and (5-3-03)
- k. Land acquisition costs and associated costs other than those listed as eligible in Subsection 032.05.g. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, ~~such as construction costs~~. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. (~~5-3-03~~)()

034. -- 039. (RESERVED).

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

040. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant ~~will~~ shall complete an environmental ~~information document (EID)~~ review as part of and in conjunction with an engineering report or a facility plan. ~~The review will be done in accordance with Chapter 5 of the Handbook.~~ Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall ~~also~~ consult with the Department at an early stage in the preparation of the engineering report or facility plan to determine the required level of environmental review. ~~The environmental information document (EID) will include, as a minimum, the following~~ Based on review of existing information and assessment of environmental impacts, the applicant shall complete one (1) of the following, per the Department's instruction: (3-30-01)()

a. ~~Description of purpose and need for proposed action~~ Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-30-01)()

b. ~~Description of the proposed alternative, including the proposed action~~ Prepare an Environmental Information Document (EID) in a format specified by the Department; or (3-30-01)()

c. ~~Description of the affected environment;~~ Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-30-01)()

~~d. Discussion of the environmental impacts of the proposed action;~~ (3-30-01)

~~e. The means to mitigate adverse environmental impacts;~~ (3-30-01)

~~f. Description of public participation process;~~ (3-30-01)

~~g. List of referenced documents;~~ (3-30-01)

~~h. List of agencies consulted; and~~ (3-30-01)

~~i. Mailing list of interested parties.~~ (3-30-01)

02. ~~Department Action~~ Categorical Exclusions. ~~Based on review of the environmental information document (EID), the Department shall~~ If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (3-30-01)()

a. ~~Issue a Categorical Exclusion (CE) with supporting documentation;~~ Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the engineering report or facility plan can be approved; or (3-30-01)()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

b. ~~Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or~~ Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID. (3-30-01)()

e. ~~Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to the Department for approval.~~ (3-30-01)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources.()

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). ()

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. ()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: ()

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ()

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and ()

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. **Final EIS.** Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 040.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The engineering report or facility plan can be completed once the final EIS has been approved by the Department. ()

037. **Use of Environmental Reviews ~~Prepared~~ Conducted by Other Agencies.** If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, ~~in~~ at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (~~3-30-01~~)()

048. **Validity of Review.** Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (3-30-01)

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-30-01)

041. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-30-01)

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with this chapter; and (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans; and ~~(5-3-03)~~(____)

d. Requirement for the prime engineering firm(s) ~~and their principals~~ retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. ~~(5-3-03)~~(____)

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 033. (5-3-03)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department shall pay for those costs that are determined to be eligible. (3-30-01)

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grantee may be reviewed by the Department. ~~The review may be deferred until the review of the design/construction loan is performed.~~ (3-30-01)(____)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process, ~~and the project review has been completed or deferred.~~ (3-30-01)(____)

061. -- 069. (RESERVED).

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-30-01)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation and project schedule, terms of engineering subagreements, or contracts for construction;~~ or (3-30-01)(____)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0122-0701

Administration of Planning Grants for Public Drinking Water Facilities

PENDING RULE

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

(3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant.

(3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated.

(3-30-01)